

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

HARBOR REGIONAL CENTER,

Service Agency.

OAH No. 2015060659

DECISION

Howard W. Cohen, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on August 4, 2015, in Torrance.

Claimant's father represented claimant, who was not present for the hearing.¹

Antoinette Perez, Program Manager, represented Harbor Regional Center (HRC or Service Agency).

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on August 4, 2015.

ISSUE

Whether the Service Agency must fund insurance copayments that claimant owes for ABA services provided to him prior to the current authorization period of October 25, 2014, to October 26, 2015.

EVIDENCE RELIED UPON

Documents: Service Agency's exhibits 1-12; claimant's exhibit A.

Testimony: Dorla Watson; Jahn Rokicki; claimant's father.

¹ Party and family titles are used to protect the privacy of claimant and his family.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Claimant is five years old; he lives at home with his parents and his younger brother. He has been diagnosed with autism and is therefore eligible for regional center services and supports. Claimant is currently attending a program at his local school district, where he receives occupational therapy, speech therapy, and other services.

2. Claimant receives 22 hours per month of applied behavior analysis (ABA) services from Easter Seals, funded by the family's insurer, Kaiser Permanente. The ABA services are provided three times per week for two hours per session.

3. In May 2013, claimant's mother first requested that HRC fund claimant's insurance copayments for ABA services. HRC asked that she submit certain documentation to establish eligibility for copayment assistance. The family provided the documentation between October and December 2014, one-and-one-half years after claimant's mother first requested assistance. HRC authorized copayment assistance commencing October 25, 2014. On April 14, 2015, claimant's parents requested that HRC provide retroactive copayment assistance for the period from May 2013 to October 25, 2014.

4. By a Notice of Proposed Action (NOPA) letter sent to claimant's father on May 13, 2015, HRC denied claimant's parents' request for copayment assistance for services received before October 25, 2014, on the grounds that the Lanterman Developmental Disabilities Act (Lanterman Act) does not permit retroactive payments in this case.

5. On June 3, 2015, claimant's father filed a Fair Hearing Request (FHR) on claimant's behalf with the Service Agency, appealing HRC's decision.

6. On June 27, 2015, Antoinette Perez, Program Manager, met informally with claimant's father to discuss his FHR and his request for retroactive funding. By letter dated July 29, 2015, Perez wrote to claimant's father that "HRC understands your family's financial hardship and the challenges you face with having a child with a disability. The case management team made every effort to get your request considered in a timely manner however; they were not able to proceed without the needed information." (Ex. 5.) Perez wrote that HRC would not change its position on retroactive funding for copayment assistance. She also wrote that "I have made a recommendation to the case management team that they assist you with working with Easter Seals to get the debt reduced. You can expect that your HRC counselor will reach out to you to offer this assistance." (*Ibid.*)

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Insurance Copayment Assistance

7. Claimant's most recent Individual/Family Service Plan (IFSP)² is dated January 30, 2015. It reflects that claimant needs assistance toileting and dressing himself, that his fine and gross motor skills are good, that he is able to communicate in short sentences, and that he gets along well with others but does not initiate communication. The IFSP reflects claimant's need for ABA services. (See Factual Finding 2.)

8. HRC does not dispute that claimant requires ABA services. Nor does HRC dispute that claimant's family meets the statutory financial criteria for copayment assistance by the Service Agency. HRC has been providing copayment assistance for the period commencing October 25, 2014, to October 26, 2015.

9. Dorla Watson, a Program Manager at HRC, testified about conversations she and other HRC staff have had with claimant's family, as documented in Consumer ID Notes regularly maintained by HRC. Claimant's mother first asked HRC for assistance with insurance copayments for ABA services on May 1, 2013. Brook Pilon, a case manager, asked claimant's mother to submit the family's tax returns.³ Three weeks later, claimant's mother called to ask whether W-2 forms would suffice in lieu of tax returns, and was told that tax returns or a copy of a tax filing extension request were required.

10. One month later, on June 21, 2013, claimant's mother called HRC to request that claimant be reassigned to a different counselor. Watson returned the call, and again claimant's mother asked what documents were required in order to obtain copayment assistance. Watson told her to submit the family's 2012 tax returns, the approval letter from Kaiser for ABA services, and the functional behavioral assessment (FBA), prepared by Easter Seals, showing that claimant requires in-home ABA services. A few days later, Christina Montgomery,

² For each regional center client, the Lanterman Act requires an "individual program plan," or "IPP." (Welf. & Inst. Code, § 4646.) HRC, rather than using those Lanterman Act terms to describe the consumer's plan, refers to an "Individual/Family Service Plan" or "IFSP," terms derived from the federal Early Intervention Program for Infants and Toddlers with Disabilities, which is known in California as the "Early Start Program" and which applies only to infants and toddlers under the age of three (Cal. Code Regs., tit. 17, § 52100 et seq.). For purposes of this matter, "IFSP" is deemed to be synonymous with "IPP."

³ Jahn Rokicki, HRC's Director of Children's Services, testified that regional center approval of copayment assistance requires a determination of need for the service, as addressed in the consumer's IFSP, and requires that the consumer's family provide documentation of the insurance company's approval of the service and of the copayment amount, and a copy of the family's most recent tax returns to establish that the family's income is below 400 percent of the federal poverty level.

claimant's new counselor at HRC, called claimant's mother and told her again what documents she must submit in order to obtain copayment assistance.

11. Claimant's parents did not provide HRC any of the required documents. Five months later, in November 2013, Montgomery called claimant's mother and left a message that it was time to update claimant's IFSP. A week later, Montgomery reached claimant's mother, who said she would call back; she did not call back. Ten days later, claimant's father spoke with Montgomery and again asked what documents were needed to obtain copayment assistance. Montgomery again told him. She also said that the payment could not be retroactive, and that she wanted to schedule an IFSP meeting. Claimant's father said his wife would call Montgomery about the IFSP. She did not do so.

12. On December 13, 2013, Montgomery wrote to the family, requesting that they contact her. On December 19, 2013, Montgomery sent a letter to the family informing them that their case would be closed in 30 days because of their lack of contact.

13. Nearly 60 days later, on February 14, 2014, having heard nothing from claimant's family, HRC inactivated claimant's case. As of that date, HRC had received none of the documents required for ABA insurance copayment assistance.

14. A month later, on March 13, 2014, claimant's mother appeared at HRC and spoke to Debra Kabrin, the officer of the day. Claimant's mother again requested copayment assistance, and said she had not received the December 19 letter about deactivating the case. Kabrin told her the case would be reactivated. Kabrin said that HRC and claimant's parents had to schedule an IFSP meeting, and again told claimant's mother what documents were needed for copayment assistance.

15. An IFSP meeting took place at claimant's home on October 10, 2014. The IFSP shows that Kaiser funds 22 hours per month of ABA services for claimant through Easter Seals.

16. Over the course of the next two months, claimant's family submitted documentation for copayment assistance. By December 5, 2014, HRC had finally received all documents required. The documents showed that the family met the applicable financial need requirements, and the insurance company documents reflected that ABA provided by Easter Seals was an approved service. HRC approved the assistance retroactive to the date the first documents, i.e., claimant's family's tax returns, were received, October 25, 2014.

17. Claimant's father testified that he does not dispute the history of HRC's requests for information from him and claimant's mother, nor that he and claimant's mother were slow to respond and slow to provide a complete set of the documents HRC requested.

18. Rather, claimant's father argued that, in spite of his family's failure from May 2013 to October 2014 to provide HRC with the documentation necessary for copayment

funding assistance, they should receive such assistance anyway. Claimant's father testified that he and claimant's mother failed to respond and communicate effectively with HRC because his family is "dysfunctional." He and his wife have both been diagnosed with clinical depression and are overwhelmed by caring for claimant; claimant's father also has obsessive compulsive disorder. Though the Service Agency has offered him assistance in applying for some degree of payment relief from Easter Seals, claimant's father has not yet applied for that relief. He argued that, even if Easter Seals reduces the amount due or offers a payment plan, HRC should pay the reduced amount. He characterized the documentation requirements as a matter of HRC policy, which for equitable reasons HRC should set aside in this case.

LEGAL CONCLUSIONS

Jurisdiction and Burden of Proof

1. The Lanterman Act governs this case. (Welf. & Inst. Code, § 4500 et seq.)⁴ An administrative hearing to determine the rights and obligations of the parties is available under the Lanterman Act to appeal a regional center decision. (§§ 4700-4716.) Claimant requested a hearing and, therefore, jurisdiction for this appeal was established. (Factual Findings 1-6.)

2. The burden of proof is on the party seeking government benefits or services. (See, e.g., *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 (disability benefits).) In this case, claimant bears the burden of proof because he is seeking funding for copayments that HRC has not previously provided. Because no law or statute mandates a different standard of proof, claimant must prove that he is entitled to the funding by a preponderance of the evidence. (Evid. Code, § 115.)

Insurance Copayment Assistance by Regional Centers

3. Claimant did not establish by a preponderance of the evidence that cause exists to order HRC to fund claimant's family's insurance copayment for ABA services provided by Easter Seals before the current authorization period commencing October 25, 2014. (Factual Findings 1-18.)

4. Before July 1, 2012, regional centers in California funded behavior therapy services for many autistic children and their families. The Legislature passed Insurance Code section 10144.51, obligating insurers to fund behavioral therapy for children with autism, effective July 1, 2012. In complying with this mandate, insurers generally impose copayment obligations on their insureds. Many families that had received full funding of behavior therapy

⁴ All further statutory references are to the Welfare and Institutions Code unless otherwise stated.

services through regional centers before July 2012 became responsible for partially paying for those services. Families began asking their regional centers to pay the insurance copayments.

5. In response, the Legislature enacted section 4659.1, effective June 27, 2013. Section 4659.1, subdivision (a), provides that if “a service or support provided pursuant to a consumer’s individualized program plan under this division . . . is paid for in whole or in part by the consumer’s parents’ private insurance, when necessary to ensure that the consumer receives the service or support, the regional center may pay any applicable copayment associated with the service or support,” under specified conditions. Absent exceptional circumstances, a regional center may only fund insurance copayments if the family’s annual gross income is less than 400 percent of the federal poverty level. (§ 4659.1, subd. (a)(2).) The consumer’s family is required to “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.” (§ 4659.1, subd. (d).)

6. HRC adopted a policy, number 2423, dated February 25, 2014, entitled “Insurance: Accessing Private Health Insurance and Insurance Copay Assistance.” (Ex. 11.) In the section concerning health care insurance copayment assistance, the policy provides that, if the HRC counselor believes the cost of insurance copayments will prevent a client from receiving “an IFSP service such as Intensive Behavior Intervention,” then HRC may assist with the cost of the copayments if the following conditions are met: the medical service is paid for by claimant’s family’s health insurance, and the family’s annual gross income does not exceed 400 percent of the federal poverty level. (*Ibid.*) To be considered for assistance, the family should provide to the counselor “1. documentation of the cost of insurance co-pay/co-insurance, and; 2. a copy of the family’s most recent tax returns.” (*Ibid.*)

7. ABA services are “a service or support provided pursuant to” claimant’s most recent IFSP. (Factual Findings 2, 7, & 15.) “Services and supports” are defined under the Lanterman Act to include “behavior training and behavior modification programs” (§ 4512, subd. (b); see also § 4685, subd. (c)(1).)

8. There is no dispute that claimant needs ABA services. (Factual Findings 2, 7, & 8.) HRC found the ABA services provided by Easter Seals to be an appropriate service and support to help claimant achieve his IFSP goals; the services are funded by Kaiser Permanente, claimant’s family’s health insurer. And the parties agree that claimant’s family meets the criteria for copayment assistance set forth in section 4659.1. (Factual Finding 8.) Moreover, because copayment assistance is necessary to ensure that claimant receives the ABA services, HRC has been providing claimant with copayment assistance, commencing October 25, 2014. (Factual Finding 8.)

9. HRC’s refusal to pay for copayments incurred by claimant prior to October 25, 2014, on the ground that HRC did not receive the documentation necessary to approve copayment assistance until December 2014, is not a mere matter of HRC policy. Regional

centers may authorize payment for services only before the services are provided, unless the services were provided in an emergency by a provider vendored with the regional center and certain specified conditions are met. (Cal. Code Regs., tit. 17, § 50612.) The ABA services provided prior to the family's submission of documentation in support of the request for copayment assistance does not qualify as an exception to the regulatory requirement that regional center payment for services must be prospective.

10. The delay in authorizing copayment assistance, from May 2013 to December 2014, occurred despite HRC's efforts to proceed to authorize the assistance. HRC is constrained by the Lanterman Act and regulations to pay copayments only after certain conditions are met, including the submission of documentation necessary to substantiate that the consumer qualifies financially and that the services provided are necessary. The HRC policy regarding copayments, and the communications from HRC to claimant's family, are consistent with the Lanterman Act. The conditions for obtaining copayment assistance were not met in this case until late 2014. Between May 2013 and December 2014, HRC made numerous efforts to obtain the family's documentation so it could process the request for assistance. (Factual Findings 9-17.) The Service Agency liberally interpreted the statute and regulation in order to commence copayment assistance in October 2014, when it received the first of the required documents, claimant's family's tax returns, rather than the date by which it had received all of the documents. HRC lacks the legal authority to pay for amounts incurred prior to October 25, 2014. HRC has offered to help claimant's family work with Easter Seals to reduce the amount of the copayments claimant owes. The Lanterman Act does not require more.

ORDER

Claimant's appeal is denied.

DATED: August 17, 2015

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Howard Cohen
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HOWARD W. COHEN
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.