

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT

vs.

WESTSIDE REGIONAL CENTER,

Service Agency.

OAH No. 2014100945

DECISION

Howard W. Cohen, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on November 19, 2014, in Culver City.

Lisa M. Basiri, Fair Hearing Coordinator, represented Westside Regional Center (WRC or Service Agency).

Claimant's mother represented claimant, who was not present.¹ Claimant's mother used the services of Eduardo Kogan, a certified court interpreter.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on November 19, 2014.

ISSUE

Whether the Service Agency should fund claimant's physical therapy (PT) services.

EVIDENCE RELIED UPON

Documents: Service Agency's exhibits 1-5; claimant's exhibits A, B.

Testimony: Lisa M. Basiri; Jesus Franco; claimant's mother.

¹ Family titles are used to protect the privacy of claimant and her family.

FACTUAL FINDINGS

1. Claimant is a seven-year-old girl. She is an eligible consumer of WRC based on her diagnoses of cerebral palsy, unspecified intellectual disability, and seizure disorder.

2. In September 2014, claimant's mother requested that the Service Agency fund claimant's PT services. By a Notice of Proposed Action (NOPA) dated September 10, 2014, the Service Agency notified claimant's mother that it was denying claimant's request on the grounds that she must first seek funding for the PT services from claimant's school district and from Medi-Cal and California Children Services (CCS).² The Service Agency incorrectly cited Welfare and Institutions Code sections 4689, subdivision (c) and 4644, subdivisions (a) and (b), as authority for its position.

3. On November 3, 2014, after an informal meeting with claimant's mother, Ron Lopez, designee of WRC's Executive Director, wrote to claimant's mother to confirm the denial of her request for funding for the reasons stated in the NOPA; he corrected the citation to statutory authority to reflect WRC's reliance on Welfare and Institutions Code section 4659. Lopez also wrote that claimant's mother had not provided documentation required to identify claimant's PT service needs, including a current evaluation of claimant or a prescription for an evaluation.

4. On October 17, 2014, claimant's mother filed a fair hearing request to appeal the Service Agency's determination regarding funding PT for claimant.

5. According to claimant's Individual Program Plan (IPP) dated September 12, 2014, claimant lives with her parents. Claimant cannot walk; she can sit with support and can lift her head for a few seconds. She wears foot braces and uses a wheelchair, special car seat, and special stroller. She is nonverbal; she babbles and moves her body to express her needs. She understands simple statements. Her fine motor skills are poor. She requires daily assistance with all her hygiene and grooming needs, and she is not toilet trained. She is not aware of danger and requires constant supervision. Claimant's vision is impaired; she can see dark colors and silhouettes. She has between six and nine seizures per day. Claimant likes to be hugged and enjoys spending time with her cousins.

6. The Service Agency funds 30 hours per month of respite for claimant's parents. When claimant was in the Early Start Program,³ WRC funded PT for claimant. When claimant transitioned out of Early Start, her school district began funding PT.

² CCS is a joint program of the California Department of Healthcare Services and various county agencies; it provides diagnostic and treatment services, medical case management, PT, and occupational therapy (OT) to individuals under the age of 21 who have CCS-eligible medical diagnoses.

³ The "Early Start Program" is the common name for the California Early Intervention Services Act (Gov. Code, § 95000 et seq.), which implements the federal Early Intervention

7. Claimant's last Individualized Education Plan (IEP) took place in June 2014. She is in second grade and is home-schooled; her teacher visits her for forty-five minutes twice per week.

8. Claimant's mother has provided inconsistent and confusing information about claimant's services. At claimant's September 2014 IPP meeting with WRC, claimant's mother reported that the school district funds 30 minutes of OT per week and 45 minutes of PT per week for claimant at home. But at hearing, claimant's mother testified that claimant has not received school district-funded PT since April 2014 due to a dispute with the district for which she has retained legal counsel. At hearing, claimant's mother testified that the attorney was filing an appeal with the district. On the other hand, she also testified that she and the district reached an agreement about a month ago, and that claimant will be having some form of needs assessment done.

9. WRC cannot verify the services currently provided by the district to claimant. Claimant's mother has not provided claimant's IEP to WRC; that document would likely help to clarify some of the uncertain information that claimant's mother provided in the IPP meeting and at hearing. Nor has claimant's mother provided WRC with documentation to show that she has submitted her funding request to Medi-Cal and CCS, documentation that WRC has requested to ascertain whether alternative sources of PT funding are available.

10. Claimant's mother provided WRC with two brief letters from claimant's physician, Dr. Maya Wille. One letter, undated, states that claimant would benefit from PT. The other letter, dated November 4, 2014, states that the doctor is going to refer claimant for an assessment for PT. These letters do not constitute a prescription for PT, nor do they demonstrate that Dr. Wille submitted any documentation to Medi-Cal or CCS.

11. Claimant's mother testified that Dr. Wille told her he was trying to contact Medi-Cal about funding PT for claimant, but that she has not heard that there has been any response. CCS performs an annual PT and occupational therapy evaluation of claimant, but has not provided funding for PT. Because claimant is not receiving any PT from the school district pending her dispute about services, claimant's mother feels that claimant is experiencing a setback.

LEGAL CONCLUSIONS

1. Cause exists to deny claimant's request that the Service Agency fund PT services for claimant, as set forth in Factual Findings 1 through 11, and Legal Conclusions 2 through 5.

Program for Infants and Toddlers with Disabilities. The Early Start Program applies only to infants and toddlers under the age of three. (Cal. Code Regs., tit. 17, § 52100 et seq.)

2. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, § 4500 et seq.)⁴

3. Under the Lanterman Act, all issues concerning the rights of persons with developmental disabilities to receive services must be decided under the appeal and fair hearing procedures set forth in section 4700 et seq. (§ 4706, subd. (a).) As the party seeking services not agreed to by the Service Agency, claimant bears the burden of proving that the denial of services was improper and that she should receive funding for those services. (See § 4712, subd. (j); *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 (disability benefits).) Claimant must prove that she is entitled to the funding by a preponderance of the evidence, because no law or statute requires otherwise. (Evid. Code, § 115.)

4. The Lanterman Act provides that a regional center shall provide appropriate services and supports for consumers, including physical therapy. (§ 4512, subd. (b).) Before a regional center is required to fund services, it shall pursue all possible alternative sources of funding, including school districts, Medi-Cal, and CCS. (§ 4659.)

5. Claimant has not provided WRC with claimant's IEP or with any documentation showing whether claimant's school district has performed any assessments of claimant's service needs or has funded or is currently funding PT services. Claimant's mother has provided no documentation that she or claimant's doctor has applied for funding from Medi-Cal or from CCS for claimant's PT services. Until she provides sufficient documentation, WRC cannot determine whether generic sources of funding are available. Under these circumstances, WRC is not obligated to fund PT services for claimant.

ORDER

Claimant's appeal is denied. Westside Regional Center's decision denying claimant's request to fund physical therapy services is sustained.

DATE: November 25, 2014

_____/s/_____
HOWARD W. COHEN
Administrative Law Judge
Office of Administrative Hearings

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

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.