

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

VICTORIA C.,

Petitioner,

vs.

KERN REGIONAL CENTER,

Respondent.

OAH Case No. 2012070114

(Early Intervention Services Act
Gov. Code, § 95000 et seq.)

DECISION

This matter came on regularly for hearing before Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, on July 17, 2012, in Bakersfield, California.

Jeffrey F. Popkin, Associate Director, represented Kern Regional Center (Respondent or Service Agency).

Leticia S.¹, Petitioner Victoria C.'s mother, represented Petitioner.

Oral and documentary evidence was received at the hearing and the matter was submitted for decision.

ISSUE

Whether Respondent should assist Petitioner's family by paying copayments of physical therapy services provided to Petitioner by TerrioKIDS.

¹ Initials have been used instead of family surnames to protect Petitioner's and her family's privacy.

FACTUAL FINDINGS

1. Petitioner was born on May 18, 2011, and has been found eligible for services under the Early Intervention Services Act (Act), Government Code section 95000 et seq., as an individual with developmental delays in gross or fine motor development (50%), in social or emotional development (50%), in receptive or expressive language development (50%), and in self-help (50%). Petitioner has also been diagnosed with Cerebral Palsy.

2. Petitioner's Cerebral Palsy primarily impacts her right side, although her muscle tone is weak throughout her body. Her right hand contracts into a fist, and she reaches to grab objects with her left hand. She does not walk, and tries to crawl.

3. The services of TerrioKIDS are part of Petitioner's Individualized Family Service Plan (IFSP). She was initially referred for occupational therapy, and is also receiving physical therapy. Petitioner attends two sessions each of occupational therapy and physical therapy per week. Each visit is scheduled for half-an-hour. Each visit has been deemed medically necessary by the therapists, who have argued against Petitioner's mother's request to reduce the visits in half to reduce the cost.

4. Petitioner's family has medical insurance, which covers the occupational and physical therapy services provided by TerrioKIDS, except for a \$20 per visit copayment.

5. Therapists are working on Petitioner's hand and on her other fine and gross motor needs. They have provided instructions for her mother to work with Petitioner at home. The therapists have also recommended hand and arm devices to help in Petitioner's care, but her family has been unable to purchase the equipment. Petitioner's mother has taken a six-week family medical leave from her employment to help meet Petitioner's medical needs.

6. a. The family seeks Respondent's assistance because the deductible payments constitute a financial hardship. Petitioner's mother works as a personal banker, and her monthly net income is approximately \$2,000. Petitioner's father is employed part time as a teacher, but is not presently working. He worked part-time during the school year and during summer school, earning a net of approximately \$2,000 per month.

b. The family's regular monthly expenses include a mortgage (\$1,645), and two car payments (\$300 and \$520). Petitioner's father has obtained a deferment of his student loans.

7. On June 29, 2012, Service Agency denied Petitioner's family's request for

assistance with the therapy copayments. Petitioner's mother filed a Due Process Hearing Request on July 3, 2012.

LEGAL CONCLUSIONS

1. In enacting the Act, the Legislature declared its intent that early intervention services for infants at risk of developing developmental disabilities constitute a cost-effective way to significantly reduce the potential impact of many disabling conditions and positively influence later development when the child reaches school age. (Gov. Code, § 95000.) Direct services are provided through the regional center system created pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code² section 4500 et seq., in coordination with other State agencies. (Gov. Code, §§ 95002 and 95003.)

2. Recent amendments to the Lanterman Act enacted as part of the budget process have limited the availability of certain services and supports to individuals receiving services under the Act. Section 4646.4, subdivision (a), provides, in part: "Regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's . . . individualized family service plan pursuant to the Government Code, the establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and when purchasing services and supports shall ensure all of the following: [§] . . . [§] (3) Utilization of other services and sources of funding as contained in Section 4659. [§] (4) Consideration of the family's responsibility for providing similar services and supports for a minor child without disabilities in identifying the consumer's service and supports needs as provided in the least restrictive and most appropriate setting. . . ."

3. Section 4659, in turn, provides:

"(a) Except as otherwise provided in subdivision (b) or (e), the regional center shall identify and pursue all possible sources of funding for consumers receiving regional center services. These sources shall include, but not be limited to, both of the following:

"(1) Governmental or other entities or programs required to provide or pay the cost of providing services, including Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, school districts, and federal supplemental security income and the state supplemental program.

"(2) Private entities, to the maximum extent they are liable for the cost of services, aid, insurance or medical assistance to the consumer.

² Unless otherwise stated, all statutory references are to the Welfare and Institutions Code.

[§] . . . [§]

“(d) (1) Effective July 1, 2009, notwithstanding any other provision of law or regulation to the contrary, a regional center shall not purchase medical or dental services for a consumer three years of age or older unless the regional center is provided with documentation of a Medi-Cal, private insurance, or health care service plan denial and the regional center determines that an appeal by the consumer or family does not have merit. . . .

[§] . . . [§]

“(e) This section shall not be construed to impose any additional liability on the parents of children with developmental disabilities, or to restrict eligibility for, or deny services to, any individual who qualifies for regional center services but is unable to pay.”

4. The evidence establishes, and it was not disputed at the hearing, that the services provided by TerrioKIDS are necessary to address Petitioner’s disability. Moreover, children without disabilities would not require the physical and occupational therapy Petitioner is receiving, and, therefore, funding cannot be denied pursuant to section 4646.4, subdivision (a)(4), on the basis that the therapy is a parental responsibility.

5. Under section 4659, a regional center may not fund medical services for a consumer with private or government insurance unless coverage is denied (subd. (d)(1)) or the family is unable to pay for the service (subd. (e)). In Petitioner’s case, her private insurance covers all the cost of therapy, except for \$20 per visit. Petitioner’s mother established that the family is presently unable to pay all the copayments. Inability to make such payments may result in Petitioner losing some or all needed services. Service Agency funding is therefore warranted pursuant to section 4659, subdivision (e), for an otherwise appropriate service.

ORDER

1. Petitioner’s appeal is sustained.
2. Respondent shall fund the occupational and physical therapy copayments, except that when Petitioner’s mother returns to work the family shall be responsible for two of the four weekly copayments. Once Petitioner’s father finds employment, the Service Agency’s obligation to fund the copayments shall cease.

Dated: _____

Samuel D. Reyes
Administrative Law Judge
Office of Administrative Hearings