

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of:

CARINA B.,

Claimant,

vs.

KERN REGIONAL CENTER,

Service Agency.

OAH NO. 2010060679

DECISION

Administrative Law Judge Humberto Flores, Office of Administrative Hearings, heard this matter in Bakersfield, California, on May 11, 2011.

Jeffrey Popkin, Associate Director, represented the Kern Regional Center (regional center).

Carina B. (claimant) appeared at the hearing and was represented by her mother.

Evidence was received at the hearing and the matter was submitted for decision on May 11, 2011.

ISSUE

Should the regional center continue to provide funding for a dietary stipend for claimant in the amount of \$750?

FACTUAL FINDINGS

1. Claimant is a 25-year-old woman whose qualifying condition is autism and severe mental retardation.

2. Claimant has also been diagnosed with Celiac disease. This illness requires claimant to have a special diet without wheat or gluten. Without this special diet, claimant suffers severe symptoms such as vomiting, weight loss, diarrhea, skin disorders and seizures. The regional center has provided funding for claimant's special diet for a number of years.

3. On May 18, 2010, the regional center notified claimant in a Notice of Proposed Action of its decision to terminate funding for claimant's special diet. The regional center based its decision on Welfare and Institutions Code section 4648, subdivision (a)(15), which prohibits a regional center from purchasing experimental treatments, therapeutic services or devices

4. Claimant timely filed a Request for Fair Hearing.

5. Claimant presented evidence, including numerous articles from various medical journals, which established that a gluten free diet is a recognized treatment for Celiac Disease.

6. At the hearing, Fidel Huerta, M.D., testified as an expert witness for the regional center. His testimony established that Celiac Disease is not directly related to autism. The regional center also presented documentary evidence which asserted that there is no greater incidence of gastrointestinal disorders in children with autism (exhibit 10). In addition Mr. Popkin testified that the purchase of service guidelines (exhibit 11) authorize the regional center to purchase a treatment for a consumer only if the treatment is for a claimant's developmental disability, or for a medical condition which arises as a direct result of a consumer's developmental disability. Claimant's representative did not object to these documents despite the fact that claimant had not been served with these exhibits prior to the hearing. Based on the testimony and documentary evidence presented in claimant's case, claimant's representative was not adequately prepared to address this alternative basis for terminating claimant's dietary service.

LEGAL CONCLUSIONS

1. In 1977, the California Legislature enacted the Lanterman Developmental Disabilities Services Act (the Lanterman Act) "to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community . . . and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community." (See, *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.). Under the Lanterman Act, the "State of California accepts a responsibility for persons with developmental disabilities and an obligation to them which it must discharge." (Welf. & Inst. Code, § 4501.)

2. In this case, the regional center previously determined that claimant should receive funding for the special diet to help reduce or eliminate the serious symptoms associated with Celiac Disease. In its Notice of Proposed Action the regional center asserts that it is taking the action to terminate the funding because the special diet is an experimental treatment and pursuant to Welfare and Institutions Code section 4648, subdivision (a)(15), the regional center is prohibited from purchasing experimental treatments. This section 4648, subdivision (a)(15), states as follows:

(15) Notwithstanding any other provision of law or regulation to the contrary, 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. Experimental treatments or therapeutic services include experimental medical or nutritional therapy when the use of the product for that purpose is not a general physician practice. For regional center consumers receiving these services as part of their individual program plan (IPP) or individualized family service plan (IFSP) on July 1, 2009, this prohibition shall apply on August 1, 2009.

In this case, the regional center did not establish that a gluten and wheat free diet is an experimental treatment for Celiac Disease.

3. At the hearing, the regional center presented another basis to terminate funding; asserting that Celiac Disease is not directly related or caused by autism, therefore, the regional center contends that it is not authorized to fund this service. To support this assertion, the regional center presented the testimony of an expert witness and introduced two exhibits (exhibits 10 and 11). As noted in Factual Finding 6, these exhibits had not been previously served on claimant. Further, in its Notice of Proposed Action, the regional center did not give claimant notice that it intended to assert this new contention as a basis for its proposed action to terminate funding for claimant's special diet service.

Welfare and Institutions Code section 4710 states in pertinent part:

(a) Adequate notice shall be sent to the applicant or recipient and the authorized representative, if any, by certified mail at least 30 days prior to any of the following actions:

(1) The agency makes any decision without mutual consent of the service recipient or authorized representative to reduce, terminate or change services set forth in the individual program plan.

The term "adequate notice" is defined in Welfare and Institutions Code section 4701. This section provides, inter alia, that the regional center must give written notice informing the applicant, recipient or authorized representative of at least the following:

- (a) The action that the service agency proposes to take, including a statement of the basis facts upon which the service agency is relying.
- (b) The reason or reasons for that action.
- (c) The effective date of that action.
- (d) The specific law, regulation or policy supporting that action.

Since the Notice of Proposed Action did not sufficiently inform claimant of an alternative basis to terminate funding, the regional center did not comply with the notice requirements of sections 4701 and 4710. Therefore, cause does not exist to terminate funding for claimant's dietary service based on the regional center's contention that Celiac Disease is not directly related or caused by autism. The Administrative Law Judge makes no factual findings or legal conclusions on the merits of the regional center's position on this alternative basis.

ORDER

The decision of the Kern Regional Center to terminate funding for claimant's special diet for Celiac Disease is overruled. Claimant's appeal is granted.

DATED: May 31, 2011

HUMBERTO FLORES
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.