

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of Claimant's Request for
Funding for Applied Behavior Analysis:

CLAIMANT

and

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2015080272

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on September 21, 2015.

Leigh-Ann Pierce, Consumer Services Representative, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

Claimant's mother represented claimant, who was not present.

The matter was submitted on September 21, 2015.

ISSUE

Should IRC fund claimant's request for Applied Behavioral Analysis (ABA) treatment from a specific vendor preferred by claimant notwithstanding the fact that the same treatment is available from a generic resource?

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant is a six-year old female who lives with her mother. Claimant is eligible for regional center services based on her diagnosis of autism.

2. On June 24, 2015, claimant's mother met with IRC staff and requested funding for behavioral health treatment for claimant. Specifically, claimant's mother requested that IRC fund ABA treatment for claimant to be administered through the California State University, San Bernardino, Center for the Developmentally Disabled (UCDD).

3. IRC does not dispute that claimant needs ABA treatment, and the treatment is listed in claimant's Individual Program Plan (IPP). However, given that claimant's private health insurer agreed to fund ABA treatment through a different vendor, IRC served claimant with a notice of proposed action on July 8, 2015, denying the request to fund ABA treatment from UCDD.

4. Claimant filed a fair hearing and mediation request objecting to IRC's decision, and this hearing followed.

Evidence Presented on Behalf of Claimant

5. Claimant lives at home with her mother and attends kindergarten. Claimant was first diagnosed with autism in November 2014, and, at that time, she began attending special education classes.

6. According to claimant's mother, claimant experiences difficulties interacting with other children. When in a group setting, claimant yells and screams and exhibits "behavioral problems." Claimant's mother believes her daughter needs ABA treatment in order to help her learn how to interact with other children.

7. Claimant's medical insurer is Medi-Cal, and her plan is administered through the Inland Empire Health Plan (IEHP). Claimant's mother requested that IEHP fund ABA treatment at UCDD. IEHP agreed to fund ABA treatment for claimant on April 28, 2015. However, IEHP advised that the treatment would not be provided by UCDD, because UCDD does not contract with IEHP.

8. Claimant's mother would prefer ABA treatment from UCDD because the ABA treatment from UCDD is provided at a center, and utilizes group treatment with other children present. Claimant's mother further explained that, unlike other routine ABA treatment provided in a person's home, the treatment at UCDD also provides group settings for parents to learn how to apply the techniques utilized with the children so that the techniques can be used at home. Claimant's mother did acknowledge, however, that

generally the techniques utilized in ABA treatment are the same whether administered in the home or in a group setting.

9. Claimant's mother appealed IEHP's denial of her request for ABA treatment through UCDD on September 9, 2015, but has not yet received a response on her appeal.

IRC's Evidence Presented at Hearing

10. IRC Consumer Services Coordinator Alberti Soqui testified at the hearing. According to Ms. Soqui, claimant qualifies for regional center services on the basis of a diagnosis of autism. Claimant's Individual Program Plan (IPP) provides that claimant is eligible for behavioral modification treatment. Claimant does not currently receive any services from IRC, however, claimant's mother requested ABA treatment through UCDD, which is not funded by IRC. Ms. Soqui testified that ABA treatment is a behavior modification treatment where providers go to the homes of claimants and help them learn to deal with diagnosis-specific behavioral problems. ABA treatment is designed to also teach the parents techniques so they can implement the techniques with their children. According to Ms. Soqui, IRC and Medi-Cal use most of the same vendors for ABA treatment, however, UCDD is not one of them. Should claimant elect to pursue the offered ABA treatment through IEHP, which will be provided in claimant's home, there are parental support groups available that assist parents with understanding how to implement techniques with their children. Ms. Soqui explained that IRC is statutorily barred from providing the requested service because there is a generic resource available to provide ABA treatment to claimant.

11. IRC Program Manager Russell Thompson testified at the hearing and corroborated the testimony of Ms. Soqui. According to Mr. Thompson, IRC denied the request for ABA treatment from UCDD because there is a generic resource available in the community to provide the needed treatment. Although not all vendors that provide ABA treatment are the same, the only notable difference between typical vendors that provide ABA treatment and the treatment provided at UCDD is that UCDD offers group treatment for parents in a center-based setting, whereas other vendors offer in-home treatment. Thus, although IRC does not dispute that claimant needs the requested ABA treatment and is empathetic to the plight of claimant's mother, IRC is not permitted to fund a vendor-specific treatment program when there is a generic resource available that can provide the same treatment through a different vendor.

LEGAL CONCLUSIONS

Burden of Proof

1. In a proceeding to determine whether an individual is eligible for a specific service, the burden of proof is on the claimant to establish that by a preponderance of the evidence that IRC should fund the requested service. (Evid. Code, §§ 115, 500; *McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1051-1052.)

The Lanterman Act

2. The Legislature enacted a comprehensive statutory scheme known as the Lanterman Developmental Disabilities Services Act (Welfare & Inst. Code, § 4500 et seq.) to provide a pattern of facilities and services sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life. The purpose of the statutory scheme is twofold: 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. (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.) Welfare and Institutions Code section 4501 outlines the state's responsibility for persons with developmental disabilities and the state's duty to establish services for those individuals.

3. Welfare and Institutions Code section 4512, subdivision (b) defines "services and supports" as:

[S]pecialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option . . . Nothing in this subdivision is intended to expand or authorize a new or different service or support for any consumer unless that service or support is contained in his or her individual program plan.

4. The State Department of Developmental Services (DDS) is the public agency in California responsible for carrying out the laws related to the care, custody and treatment of individuals with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4416.) In order to comply with its statutory mandate, DDS contracts with private non-profit community agencies, known as "regional centers," to provide the developmentally disabled with "access to the services and supports best suited to them throughout their lifetime." (Welf. & Inst. Code, § 4620.)

5. A regional center's responsibilities to its consumers are set forth in Welfare and Institutions Code sections 4640-4659.

6. Welfare and Institutions Code section 4646 requires that the Individual Program Plan and the provision of the services and supports be centered on the individual with developmental disabilities and take into account the needs and preferences of the individual and the family. Further, the provisions of services must be effective in meeting the IPP goals, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

7. Welfare and Institutions Code section 4648 requires regional centers to ensure that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and to secure services and supports that meet the needs of the consumer, as determined by the IPP. This section also requires regional centers to be fiscally responsible.

8. In implementing Individual Program Plans, regional centers are required to first consider services and supports in natural community, home, work, and recreational settings. (Welfare & Inst. Code, § 4648, subd. (a)(2).) Services and supports shall be flexible and individually tailored to the consumer and, where appropriate, his or her family. (*Ibid.*) A regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer in order to best accomplish all or any part of the Individual Program Plan. (Welfare & Inst. Code, § 4648, subd. (a)(3).)

9. A regional center is required to consider generic resources, such as an individual's health insurer, prior to funding any requested service. (Welfare & Inst. Code, § 4659, subd. (a).) If a requested service is available through a generic resource, a regional center is prohibited from funding that service. (*Id.* at subd. (c).)

Cause Does Not Exist To Require IRC to Fund ABA Treatment at UCDD

10. The Lanterman Act and the applicable regulations set forth criteria that a claimant must meet in order to qualify for regional center services. Claimant had the burden of demonstrating the need for the requested service or support, funding for ABA treatment at UCDD. Claimant has not met that burden.

IEHP, a generic resource, agreed to fund ABA treatment to claimant. Although claimant's mother might prefer treatment at UCDD, claimant's mother acknowledged that the ABA techniques and treatment provided by different vendors is generally the same. Mr. Thompson and Ms. Soqui also explained that the only difference between UCDD and other ABA vendors is that treatment is provided in a center-based setting at UCDD rather than in a claimant's home. Moreover, although UCDD's program may provide center-based group treatments for parents, as Ms. Soqui explained, there are parental support groups available to assist parents with implementing techniques learned in any ABA treatment program.

Claimant's mother clearly wants the best treatment possible for her daughter, and her testimony was heartfelt and genuine. However, given that IEHP agreed to fund claimant's request for ABA treatment, IRC is barred under the Lanterman Act from funding the ABA treatment from UCDD.

ORDER

Claimant's appeal from Inland Regional Center's determination that it will not fund Applied Behavioral Analysis through the California State University, San Bernardino, University Center for the Developmentally Disabled, is denied.

DATED: September 28, 2015

KIMBERLY J. BELVEDERE
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 ninety days.