

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

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DIRECTOR'S OFFICE

In the Matter of:

SHAHZEB M.,

Claimant,

vs.

REGIONAL CENTER OF THE EAST  
BAY,

Service Agency.

OAH, No. 2012090527

**DECISION**

Administrative Law Judge David L. Benjamin, State of California, Office of Administrative Hearings, heard this matter on November 9, 2012, in Concord, California.

Mary Dugan represented Regional Center of the East Bay, the service agency.

Claimant Shahzeb M. was represented by his father.

The record closed and the matter was submitted on November 9, 2012.

**ISSUES PRESENTED**

At hearing, the parties stated that the issue presented is whether the regional center is obligated to pay all or part of claimant's health insurance deductible for claimant's Applied Behavior Analysis services. For the reasons set forth in Legal Conclusion 4, it is determined that this is an incorrect characterization of the issue presented. The issue, based upon the Notice of Proposed Action and the legal principles that apply to this case, is whether the regional center may discontinue claimant's ABA services based upon claimant's health insurance coverage.

Also at hearing, the parties tendered the additional issue of whether regional center failed to meet its obligation to provide ABA services to claimant during the pendency of his appeal.

## FACTUAL FINDINGS

1. Claimant Shahzeb M., a seven-year-old boy, is eligible to receive services from Regional Center of the East Bay (RCEB) due to autism. His most recent Individual Program Plan (IPP) is dated August 25, 2011.

2. In August 2011, the regional center initiated an assessment of claimant's need for intensive autism services. In an IPP Addendum dated January 20, 2012, RCEB agreed to provide intensive autism services to claimant beginning in February 2012 and continuing through January 31, 2013. The addendum called for the services to be provided by STE Consultants.

3. STE Consultants began providing service to claimant in February 2012. STE Consultants describes its services as an "Applied Behavior Analysis" (ABA) program.

4. Under amendments to California law that took effect on July 1, 2012, health insurance policies must provide coverage for behavioral health treatment for autism. (Stats. 2011, ch. 650.) At hearing and in the documents pertaining to this case, RCEB refers to the new law as "Senate Bill 946."

5. Claimant's family has a health insurance policy. It is uncontested that, under that policy, claimant's insurer is obligated to provide behavioral health treatment for claimant, once claimant and his family have met the policy's deductible. Claimant's individual deductible is \$6,800 per year; the annual family deductible is \$13,600. Claimant's father secured the policy to provide catastrophic health coverage for his family. Neither claimant nor claimant's family has met the deductible; claimant's health has always been good.

6. On August 27, 2012, RCEB issued a Notice of Proposed Action in which it informed claimant that it intended to "[deny] continuation of ABA services beyond September 30, 2012." As the reasons for its proposed action, RCEB wrote:

Your private health insurance, regulated by the State of California, is required to provide coverage for behavioral health treatment for persons with . . . autism as a result of California Senate Bill 946.

Claimant filed a timely appeal.

7. Claimant believes that RCEB should pay for ABA services until his deductible is satisfied and the insurer becomes obligated to pay for the services. Claimant argues that, if he did not have health insurance, RCEB would be obligated to pay for those services; he feels that RCEB should not be excused from doing so just because his health insurance policy has a high deductible. Claimant's father cannot afford to pay the monthly cost of claimant's ABA services.

RCEB is willing to pay for claimant's ABA services until his deductible is satisfied, but only at the end of calendar year 2013, when RCEB can identify claimant's out-of-pocket expenses for ABA. RCEB states that if it were to pay for claimant's ABA services as they are rendered throughout the year, claimant may have medical expenses later in the year that would have satisfied his deductible, making RCEB's payments for those services an unnecessary public expenditure. Alternatively, RCEB states, it would be willing to pay one-quarter of the family deductible, \$3,400, at the rate of \$283 per month.

8. Claimant contends that RCEB refused to provide ABA services to him during the course of this appeal. The evidence, however, does not support claimant's contention. RCEB did not advise STE Consultants to stop providing services to claimant. Rather, on September 12, 2012, Kristi Miller of STE Consultants wrote to RCEB and informed the regional center that

[u]nfortunately, we were not able to offer staffing for Shahzeb in the month of September. I stayed on in the Clinical Director position and called the family (leaving a voicemail) offering parent training. They did not return my call. [¶] Overall, I believe Shahzeb made nice progress – I would have [liked] to keep him with the service longer because I think that would have been very beneficial.

#### LEGAL CONCLUSIONS

1. Under the Lanterman Developmental Disabilities Services Act (Welf. & Inst. Code, § 4500 et seq.), the State of California accepts responsibility for persons with developmental disabilities.<sup>1</sup> The Lanterman Act provides that an "array of services and supports should be established . . . to meet the needs and choices of each person with developmental disabilities . . . and to support their integration into the mainstream life of the community." (§ 4501.) Regional centers are required to carry out the state's responsibility to the developmentally disabled. (§ 4501.)

2. The services and supports to be provided to a consumer are set forth in the consumer's IPP. (§ 4646.5, subd. (a)(4).) A regional center must secure services and supports that meet the needs of the consumer "as determined in the consumer's [IPP]." (§ 4648, subd. (a)(1).) Regional centers have no discretion in determining whether to implement an IPP: they must do so. (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 390.)

3. In its Notice of Proposed Action, RCEB states that it proposes to discontinue funding of ABA services for claimant. RCEB relies on section 4659 to support its proposed action. Subdivision (a) of that section directs regional centers to "identify and pursue all

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<sup>1</sup> All statutory citations are to the Welfare and Institutions Code.

possible sources of funding for consumers receiving regional center services," including private insurance. Subdivision (c) states:

Effective July 1, 2009, notwithstanding any other provision of law or regulation to the contrary, regional centers shall not purchase any service that would otherwise be available from . . . private insurance, or a health care service plan when a consumer or a family meets the criteria of this coverage but chooses not to pursue that coverage.

Subdivision (e) states that section 4659 "shall not be construed to impose any additional liability on the parents of children with developmental disabilities, . . . or deny services to, any individual who qualifies for regional center services but is unable to pay."

4. It follows from the legal principles set forth above that, unless section 4659 relieves RCEB of its obligation, the regional center must continue ABA services for claimant to the extent set forth in his IPP Addendum. The parties' characterization of the issue presented – whether RCEB is required to pay all or part of claimant's deductible for ABA services – is not correct. The issue is whether, given the facts of this case and RCEB's Notice of Proposed Action, the regional center can discontinue its funding of ABA service based upon claimant's health insurance coverage.

5. Section 4659 does not justify RCEB's decision to discontinue funding of ABA services for claimant. ABA services are not available from claimant's health insurer because claimant has not met the policy's deductible. There is no issue of whether claimant has "chosen" not to pursue coverage under his health insurance policy: he cannot access that coverage until he has met the deductible.

It is recognized that RCEB is willing to reimburse claimant, at the end of 2013, for the cost of his ABA services up to the point that his deductible is satisfied. But, under section 4648, subdivision (a)(1), it is the regional center's obligation to pay for the ABA services called for in the IPP Addendum. Under section 4659, that obligation ends only when the service is available from claimant's private insurer. Moreover, under subdivision (e) of section 4659, RCEB may not impose on claimant the obligation to advance, on RCEB's account, the costs of his ABA services. That is an additional liability not imposed on other parents of autistic consumers who are provided with ABA services. Finally, the evidence establishes that claimant cannot afford to pay for his ABA services. Subdivision (e) of section 4659 prohibits the regional center from denying services to claimant that he is qualified to receive, but unable to pay for.

For these reasons, RCEB may not discontinue funding of claimant's ABA services at this time based upon his health insurance coverage.

6. Following a timely appeal, a regional center is obligated to continue providing services to the consumer until the appeal is resolved, an obligation commonly referred to as

“aid-paid pending.” (§ 4715.) Claimant asserts that RCEB failed to provide aid-paid pending after issuing its Notice of Proposed Action. For the reasons set forth in Finding 8, the evidence fails to support claimant’s assertion.

**ORDER**

The appeal of claimant Shahzeb M. is granted. At this time, RCEB may not discontinue funding of claimant’s ABA services based upon his health insurance coverage.

DATED: November 27, 2012



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DAVID L. BENJAMIN  
Administrative Law Judge  
Office of Administrative Hearings

**NOTICE**

This is a final administrative adjudication decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within ninety (90) days.