

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

WESTSIDEREGIONAL CENTER,

Service Agency.

OAH No. 2018080735

DECISION

Howard W. Cohen, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on October 3, 2018, in Culver City, California.

Claimant, who was not present, was represented by her mother.¹ Lisa Basiri, Fair Hearing Specialist, represented Westside Regional Center (WRC or Service Agency).

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on October 3, 2018.

ISSUE

Whether the Service Agency must reimburse claimant's mother for claimant's participation in a Social Foundations program in the summer of 2018.

EVIDENCE RELIED UPON

Documents: Service Agency's exhibits 1-6; claimant's exhibits A-J.

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

Testimony. Lisa Basiri; claimant's mother.

FACTUAL FINDINGS

Claimant is an eight-year-old girl who is a consumer of WRC based on her qualifying diagnosis of Autism Spectrum Disorder (ASD). She is an only child and lives at home with her parents.

1. Claimant attends elementary school. Her school district placed her in a general education program with additional services and supports, including occupational therapy, speech therapy, a resource class, and a one-to-one aide.

2. Claimant's most recent Individual Program Plan (IPP), dated February 29, 2016, has been reviewed annually, as reflected in interim reports. According to the most recent IPP Interim Report, dated February 15, 2018, WRC agreed to fund in-home respite, specialized supervision (27 hours per month of after-school care), 200 hours of extended school year (ESY) services for the summer of 2018, behavior intervention (62 hours per month), and social skills training as authorized monthly.

3. Claimant's school year ended on Friday, June 8, 2018. Claimant's mother enrolled claimant in camp for the week of June 11 at the Institute for Applied Behavioral Analysis (IABA), claimant's WRC-vendored ABA provider, though claimant's mother paid for this summer camp. She enrolled claimant in Tumbleweeds Day Camp (a typical day camp not limited to serving the developmentally disabled) for the week of June 18, and UCLA lab school for the weeks of June 25, July 2, July 9, and July 16, which claimant had attended in 2017. WRC had authorized social skills funding for claimant's participation in the Miracle Project, which offered social skills classes scheduled to begin in June 2018. The Miracle Project, however, repeatedly delayed its start date and did not commence until August 19.

4. When other parents spoke highly to her of Social Foundations, claimant's mother enrolled claimant in the Social Foundations program for three weeks beginning on July 9, even though she had paid for four weeks, including the weeks of July 9 and July 16,

at the UCLA lab school.

5. Claimant's family traveled to Michigan from July 28 to August 11, and claimant began school again on August 14.

6. On July 20, 2018, claimant's mother requested reimbursement in the amount of \$984, the cost of the three weeks claimant was enrolled in the Social Foundations program. She wrote to Michael Nelson, claimant's service coordinator at the time, that she had withdrawn claimant from "Sarah Schefflen's social skills group at the end of May in order to start at the Miracle Project, which we were told would begin right away." (Ex. E, p. 1.) She wrote that, during the summer, Social Foundations "run a 'camp.' During the three morning hours [claimant] attends, it is indoors, involves small group activities with both typical and neurotypical peers, and is run by ABA-trained staff, including supervisor-level members of [another provider that is] WRC-vendored. [¶] I realize that it would have been better had I requested this reimbursement ahead of time, but there has been one fire after another to put out this summer. The latest one occurred on June 30, when [claimant] swallowed a Kennedy half-dollar" and required an emergency endoscopy. (Ex. 4, p. 3.)

7. On July 24, Mr. Nelson emailed claimant's mother to ask her for receipts showing her payments to Social Foundations, informing her that "this is not a WRC vendor[ed] program so it cannot be requested as a service but I can present it as a request from you for a parent reimbursement." (Ex. I.) On August 15, 2018, claimant's mother again emailed Mr. Nelson to request reimbursement, writing that "'camp' is a misnomer. This is a social skills group, held indoors throughout the year, and run by ABA-trained staff, doing small group activities. She also wrote that the Miracle Project sent her postponement letters every few weeks starting in May, so she "could not anticipate needing to switch to Social Foundations until the last minute; hence, no time to request authorization from WRC." (Ex. E.) She did not explain why she could not request advance WRC authorization to enroll claimant in Social Foundations while claimant was enrolled in the UCLA lab

school, rather than withdrawing claimant from that program two weeks early to place her in the Social Foundations program.

8. By a Notice of Proposed Action (NOPA) and letter dated July 30, 2018, WRC denied claimant's mother's request. WRC wrote that the Social Foundations program was a social recreational camp service and that WRC had not authorized reimbursement in advance of claimant's enrollment. WRC cited Welfare and Institutions Code sections 4648.5 and 4646[.5], subdivision (a)(1) and (5),²in support of its denial. (Ex. 2.)

9. On August 15, 2018, claimant's mother submitted to WRC a Fair Hearing Request (FHR) on claimant's behalf, requesting reimbursement. She wrote in the FHR that the program was "a social skills group, not a 'camp': it is indoors, involves small group activities with both typical and neurotypical peers, and is run by ABA-trained staff." She wrote that "WRC had authorized [claimant] to start with the Miracle Project in June, but they kept postponing their start date, which is now August 19!" (Ex. 2.)

10. Mary E. Rollins, Executive Director of WRC, met with claimant's mother informally on August 29, 2018, to discuss the Fair Hearing Request. In a letter of the same date, Ms. Rollins reiterated the Service Agency's decision to refuse the funding request. Ms. Rollins wrote that:

Although you believe the Social Foundation program is not a camp the program that [claimant] attended is defined by the Social Foundation as a camp with a day by day camp schedule. [L]egislation . . . prohibits regional center from funding social recreational programs including camps. Your request for funding of this service was a retroactive request. If the request had been made prior to her attending the

²All further statutory references are to the Welfare and Institutions Code.

camp, you would have known that regional center is prohibited from funding camp experiences.

(Ex. 3.)

11. At the hearing, Ms. Basiri testified that, as Mr. Nelson had informed claimant's mother, Social Foundations is not a program vendored by WRC to provide services and supports to WRC consumers, so there is no mechanism by which WRC could fund services provided there.

12. Claimant's mother testified that the Social Foundations program offered claimant an opportunity to interact with other children so she could learn appropriate social behaviors. She testified that claimant's school district has acknowledged claimant's need for social skills training. (See, e.g., ex. 4, pp. 4-6.) Claimant's teachers repeatedly reported that claimant engaged in such behaviors as poking, pushing, and throwing objects at peers.

13. Suzanne Tabachnick, the owner of Social Foundations, wrote in an email to claimant's mother on July 21, 2018 that "It's very difficult for [claimant] to connect with kids because she uses her body to communicate instead of words. While she does play games and will engage in structured play for a limited amount of time, she will often disengage and want to play by herself. Sometimes she's easily redirected to engage in group play but at times she's resistant. [¶] We've just been working with her on noticing other kids' reactions when she uses her body instead of words. That's the biggest key for the future so she can begin to self monitor." (Ex. 4, p. 10.) She wrote that staff helped claimant notice peers' reactions to her behaviors (ex. A), and assured claimant's mother that claimant was not "too disruptive for camp." (Ex. B.)

14. On its website, Social Foundations describes the program claimant attended

as a "camp."³ This designation does not determinate whether the program is a social recreational program or a social skills training program; more pertinent to that determination is the nature of the services provided. The website describes a "camp program . . . dedicated to providing a unique and positive camp experience for children, ages 5-12, and teens 13-15, who need 'just right' social learning support in a creative and fun camp environment. Social support includes friendship building skills, social cues, social problem solving and more. [¶] Campers enjoy a personalized and socially supportive camp experience with highly trained and knowledgeable staff. We help kids build social success from the inside out." (Ex. 5, p. 1.) The "camp calendar" shows that morning sessions, which claimant attended, involved activities from 9:00 to 12:00, with a snack from 10:30 to 11:00. Morning sessions were held in an office building suite. Afternoon sessions, which claimant did not attend, took place outdoors in a nearby park. The record as a whole does not reflect more specifically how Social Foundations integrates developmentally disabled children with non-developmentally disabled children, what social skills training methods it uses, whether and how the training relates to IPP goals and objectives, and whether and how it measures success at achieving those goals and objectives.

15. Claimant's mother, while still disputing WRC's conclusion that the Social Foundations summer program was a camp, requested, if it is considered a camp, that claimant be given an exemption from the suspension of funding for social recreational and camping services. Although she acknowledged that a failure to obtain funding for the camp will not jeopardize claimant's ability to reside at home, she believes the program was a primary or critical means of ameliorating the effects of claimant's developmental disability, no alternative service was available to meet claimant's needs, and that this was

³ Social Foundations also offers a "social learning groups" program one hour per week during the school year. (Ex. C.)

an extraordinary circumstance.

DISCUSSION

JURISDICTION AND BURDEN OF PROOF

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (§ 4500 et seq.) 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 reimbursement for services was improper and she should receive funding for those services. (See § 4712, subd. (j); *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) Claimant must prove that she is entitled to reimbursement by a preponderance of the evidence, because no law or statute requires otherwise. (Evid. Code, § 115.)

2. Claimant's mother requested a fair hearing to appeal the Service Agency's denial of reimbursement for the cost of claimant's participation in the Social Foundations summer program. Jurisdiction in this case was thus established. (Factual Findings 1-11.)

REIMBURSEMENT FOR THE COST OF THE SUMMER FOUNDATIONS PROGRAM

3. The Lanterman Act acknowledges the state's responsibility to provide services and supports for developmentally disabled individuals and their families. (§ 4501.) Regional centers such as the Service Agency play a critical role in the coordination and delivery of services and supports. (§ 4620 et seq.) They are responsible for developing and implementing IPP's, for taking into account consumer needs and preferences, and for ensuring service cost-effectiveness. (§§ 4646, 4646.5, 4647, and 4648.)

//

//

//

4. Section 4512, subdivision (b), defines the role of the IPP process as follows:

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 where 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

5. The IPP process must include "a review of the strengths, preferences, and needs of the child and the family" and appropriate assessments. (§ 4646.5, subd. (a)(1).) The IPP process must also include "[a] schedule of the type and amount of services and supports to be purchased by the regional center or obtained from generic agencies or other resources in order to achieve the individual program plan goals and objectives, and identification of the provider or providers of service responsible for attaining each objective, including, but not limited to, vendors, contracted providers, generic service agencies, and natural supports." (§ 4646.5, subd. (a)(5).)

6. Services and supports for a particular consumer may include "community integration services . . . [and] social skills training" (§ 4512, subd. (b).) The Lanterman Act assigns a priority to services that will maximize the consumer's participation in the community. (§§ 4646.5, subd. (a)(2); 4648, subd. (a)(1), (2).) The Legislature intends that the

IPP and the services and supports provided by the regional center promote community integration, independent productive lives, and stable and healthy environments for consumers. (§4646, subd. (a).)

7. In 2009, the Legislature amended the Lanterman Act in ways intended to reduce regional center funding of certain services. Section 4648.5, subdivision (a)(2), suspended regional center funding for "social recreation activities, except for those activities vendored as community-based day programs," and for camping services.

8. In this case, the Summer Foundations summer program is subject to suspension by section 4648.5, subdivision (a)(2). The evidence on this record does not establish sufficiently that the program is a social skills program designed to help claimant achieve her IPP goals and objectives, rather than a social recreation program. (Factual Findings 1-16.)

//

//

//

9. Nor is Social Foundations vendored by WRC. The Lanterman Act provides that regional center funding of a social skills provider is contingent on the facility being vendored by the regional center. A regional center may, through vendorization or contract, purchase services or supports for a consumer from any individual or agency that the regional center and consumer or consumer's parents determine will best accomplish all or any part of the consumer's IPP. (§ 4648, subd. (a)(3).) Vendorization or contracting is the process of identification, selection, and utilization of service vendors or contractors, based on the qualifications and other requirements necessary in order to provide the service. (§ 4648, subd. (a)(3)(A).) Because Social Foundations is not vendored by WRC, the Service Agency may not fund Social Foundations for services or supports provided to claimant, or reimburse claimant's mother for the costs of the program.

10. Even if Social Foundations were a vendorized provider, the suspension of regional center funding for social recreational and camping services would bar the Service Agency from funding the summer program for claimant.

11. An exemption from the suspension may be granted to allow funding "in extraordinary circumstances to permit purchase of a service identified in subdivision (a) when the regional center determines that the service is a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of the consumer's developmental disability, or the service is necessary to enable the consumer to remain in his or her home and no alternative service is available to meet the consumer's needs." (§ 4648.5, subd. (c).)

12. An exemption is not warranted in this case. The Social Foundations summer program has not been shown to be the only structured service available to claimant designed for social interaction and allowing claimant any significant social interaction with peers. The Service Agency offered to fund social skills training programs for claimant in the summer in order to supplement her educational social skills programming, the primary means for ameliorating the effects of claimant's developmental disability. In the circumstances of this case, Social Foundations does not constitute a critical means for ameliorating the physical, cognitive, and psychosocial effects of claimant's developmental disability. Claimant's mother agreed that a failure to obtain funding for the camp will not jeopardize claimant's ability to reside at home.

13. Finally, rather than allow WRC to participate in determining whether the summer program appropriately addressed claimant's IPP goals, as contemplated in the Lanterman Act, claimant's mother removed claimant from a summer program with two weeks remaining in order to enroll her in the Social Foundations program without conferring first with WRC. There is no support in such circumstances for ordering reimbursement.

//

//

//

LEGAL CONCLUSION

Cause wasnot established under section 4648.5 to require Service Agency to reimburse claimant's mother for the cost of claimant's participation in the Social Foundations summer program. (Factual Findings 1-16, and Discussion.)

ORDER

Claimant's appeal is denied. Westside Regional Center's decision denying claimant's mother's request to reimburse herfor claimant's participation in the Social Foundations summer program in 2018 is sustained.

DATE:

HOWARD W. COHEN

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.