

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

DAVID A.,

Claimant,

vs.

SOUTH CENTRAL LOS ANGELES  
REGIONAL CENTER,

Service Agency.

OAH No. 2012050506

DECISION

Howard W. Cohen, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter on June 21, 2012, in Los Angeles.

Johanna Arias-Bhatia, Fair Hearing Coordinator, represented South Central Los Angeles Regional Center (Service Agency or SCLARC).

Susana G., claimant's mother, represent claimant David A., who was not present.<sup>1</sup>

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on June 21, 2012.

ISSUE

Whether the Service Agency must fund social skills training services for claimant.

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<sup>1</sup> Initials and family titles are used to protect the privacy of claimant and his family.

## EVIDENCE RELIED UPON

*Documents.* Service Agency's exhibits 1-8; claimant's exhibits A-D.

*Testimony.* Dania Medina; Kimberly Bernardez; Monique Craig; Susana G.

## FACTUAL FINDINGS

1. Claimant is an eight-year-old boy who is a consumer of SCLARC based on his qualifying diagnoses of mental retardation and autism.

2. Claimant lives at home with his parents and two sisters. He attends Village Glen School, a non-public school funded by the Los Angeles Unified School District that provides "a small, highly structured non-public school environment geared towards supporting students with communication, socialization, sensory, and learning needs is [sic] the least restrictive educational setting suitable to enable the student to progress toward his goals at this time." (Ex. 6.)

3. Claimant receives special education services from the school district, including some social skills instruction. (Ex. 6.) Dania Medina, claimant's service coordinator at SCLARC since November 2011, testified that the second page of claimant's most recent Individualized Education Program (IEP), dated February 8, 2012, reflects that claimant has met his social skills objectives. But in the copy of the IEP marked as Exhibit 6, there are two pages numbered "2." The first page "2" is as Medina describes. The second page "2," however, reflects that claimant has not met his social skills objectives, and notes that he "[n]eeds 3-4 prompts to maintain personal space." (*Id.*)<sup>2</sup> In light of the ambiguity created by the two versions of page 2, more weight will

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<sup>2</sup> Claimant brought to the hearing a copy of the IEP, which was not marked as an exhibit because it would have been duplicative of the Service Agency's Exhibit 6.

be given to the narrative assessment of claimant's social skills progress, on the seventh page (numbered page 3) of the IEP. There, the assessor observed that claimant "has difficulty with social interactions with his peers and adults. He has difficulty with social filters, being able to distinguish friends from strangers." (*Id.*) The IEP states that, although claimant has made progress in engaging with others, "he continues to need adult help with initiations and with verbal skills. He needs 3-4 prompts to identify and initiate with friends. [Claimant] continues to show difficulty with discriminating between appropriate vs. inappropriate people to socialize with. He has difficulty with giving personal space to people he knows and does not know." (*Id.*)<sup>3</sup>

4. A Psycho-Educational Report prepared by a school psychologist, Trené L. Turner, dated March 3, 2010, states that claimant's socialization skills are "estimated in the well below average range. This area presents as a significant deficit when looking at [claimant's] overall adaptive skills. . . . Significant deficits are noted in the area of his communication skills, as well as the socialization domain which greatly impacts his ability to facilitate throughout the school day without constant and direct prompting from an adult." (Ex. C.)

5. Claimant receives Service Agency funding only for respite services. According to claimant's most recent Individual Program Plan annual review, dated September 8, 2011, Susana G. reported that claimant "is socially aggressive almost daily"

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Claimant's copy only has one page numbered "2," the one that says claimant did not meet his social skills objectives.

<sup>3</sup> These comments are consistent with the second of the pages in Exhibit 6 labeled page "2," which states that claimant did not meet his social skills objectives.

and that he attends Village Glen Elementary School in part to enable him to develop his social skills. (Ex. 4.)

6. Susana G. requested social skills training for claimant in January 2012. By a Notice of Proposed Action (NOPA) letter dated April 13, 2012, SCLARC notified claimant's mother of its proposed action to deny her request to fund social skills training for claimant on the grounds that social skills training is an educational service or nonmedical therapy for which funding is suspended under Welfare and Institutions Code section 4648.5, subdivision (a)(3) and (4).<sup>4</sup> In the NOPA letter, SCLARC noted that it had offered to pay for an afterschool program, specifically Milestones or Acacia, that provides a behavior model and close supervision to address claimant's behavioral needs; that there are generic services that would meet claimant's social skills training needs; and that other sources of funding, specifically Medi-Cal, must be sought for the requested services under section 4659, subdivision (a).

7. Claimant's mother submitted an undated Fair Hearing Request to SCLARC on claimant's behalf, appealing the proposed denial of funding on the grounds that claimant "has difficulty with social interactions with his peers and adults. He also has difficulty with social filters, being able to distinguish friends and strangers." (Ex. 2.)

8. Dania Medina testified that, when Susana G. requested social skills training for claimant, she told Susana G. of a generic after-school service called "Dinosaur" that Medi-Cal pays for. She promised to look into the request for social skills training, and referred the matter to Monique Craig, the Service Agency's Education Behavioral Specialist. She also sent Susana G. some materials about Dinosaur and requested that a

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<sup>4</sup> All further statutory references are to the California Welfare and Institutions Code unless otherwise stated.

copy of claimant's upcoming IEP be sent to her. In a telephone call on April 20, 2012, Medina told Susana G. that the Service Agency had sent her the NOPA denying the request for funding for social skills training. Susana G. acknowledged that claimant receives social skills instruction in school, but she said claimant continues to need social skills training outside of school in order to be able to participate in the community. Medina suggested two after-school behavioral programs that the Service Agency would be willing to fund, Milestone and Acacia. Claimant's mother said they were too far away and that they would not meet claimant's needs.

9. Kimberly Bernardez, a Program Manager at SCLARC who supervises Medina, testified that the Service Agency considers social skills training to be an educational service and a nonmedical therapy, that there are generic services available to claimant after school and during the summer, including free camps, and that the Service Agency is willing to fund claimant's attendance at Milestones and Acacia, which have extended-year programming throughout summer.

10. Monique Craig testified that she recommended to Medina and Bernardez that the Service Agency deny funding for social skills training, in part because claimant's school provides social skills instruction. She testified that the Service Agency would fund claimant's participation in Milestones or Acacia, behavioral programs that are available after school and during the summer.

11. The Service Agency did not provide testimony or submit evidence of a functional behavioral assessment showing that the behavioral programs at Milestones and Acacia are appropriate to meet claimant's needs for services and supports, and it did not establish on the record at hearing that those programs would address claimant's social skills deficits.

12. Claimant's mother testified that claimant has communication skills problems that hinder his socialization. He does not initiate conversations without a great deal of adult prompting. He needs social skills training to be able to communicate with his peers. This is true even at school, where claimant receives social skills instruction. (See Exs. B, C, and D.) The Service Agency suggested that claimant's mother ask her insurance carrier to pay for the Dinosaur program, but her plan at Kaiser does not provide such coverage. Milestones and Acacia are too far from claimant's school to afford any real opportunity for claimant to benefit from their services. Claimant arrives home from school at 4:30; he would just have one hour of after school programming at Milestones and Acacia, because it would take Susana G. 30 minutes to get to Milestones and Acacia, and those programs stop at 6:00 p.m. (Susana G. acknowledged that claimant arrives home at 3:00 p.m. during the summer, which would afford him more time at those programs during the summer months.) Other programs, such as Leaps and Bounds, are very close to claimant's school. Also, Susana G. observed the programs at Milestones and Acacia, and found that they did not address behaviors that claimant exhibits. Susana G. testified that claimant is not improving enough, and that he needs more social skills training.

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## DISCUSSION

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (§ 4500 et seq.) An administrative "fair hearing" to determine the rights and obligations of the parties is available under the Lanterman Act. (§§ 4700-4716.) Claimant's mother requested a fair hearing to appeal the Service Agency's denial

of funding for social skills training for claimant. Jurisdiction in this case was thus established. (Factual Findings 6 & 7.)

2. The party asserting a claim generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) In this case, claimant bears the burden of proving, by a preponderance of the evidence, that claimant is entitled to Service Agency funding for social skills training. (Evid. Code, § 115.)

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.) Thus, regional centers are responsible for developing and implementing IPPs, 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. Services and supports for a particular consumer may include “community integration services . . . [and] social skills training” in addition to “behavior training and behavior modification programs . . . .” (§ 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).) “It is the intent of the Legislature that regional centers provide or secure family support services that . . . promote the inclusion of children with disabilities in all aspects of school and community.” (§ 4685, subd. (b)(5).)

6. The Service Agency has denied funding for social skills training for claimant on the grounds that the program falls within the categories of educational services or non-medical therapies for which funding is suspended under section 4648.5. That section was added to the Lanterman Act in 2009 to reduce spending due to California’s severe budgetary constraints. (§ 4648.5, subd. (a)(4), (5).)

7. SCLARC did not establish that the social skills training services are subject to the “educational services” suspension provision of section 4648.5, subdivision (a)(3). While social skills training may be offered through claimant’s school district to assist claimant in accessing his educational opportunities, for which the regional center does not provide funding, that does not preclude regional centers from funding social skills training to assist claimant with community integration, as mandated throughout the Lanterman Act. (§§ 4512, subd. (b); 4646.5, subd. (a)(2); 4648, subd. (a)(1), (2); 4685, subd. (b)(5).) Claimant established a need for social skills training to assist him in accessing the community in addition to the social skills training for educational purposes that he receives at school.



8. Nor did SCLARC establish that the social skills training services are subject to the “non-medical therapy” suspension provision of section 4648.5, subdivision (a)(4). Social skills training is not akin to the types of services referenced as examples of non-medical therapy in section 4648.5, subdivision (a)(4), i.e., specialized recreation, art, dance, and music.<sup>5</sup> And social skills training does not appear to be a type of “therapy.” For example, with respect to the related field of adaptive skills training, the regulations adopted under the Lanterman Act define an “adaptive skills trainer” not as a therapist but as someone who “possesses the skills, training and education necessary to enhance existing consumer skills. An adaptive skills trainer may also remedy consumer skill deficits in communication, social function or other related skill areas . . . .” (Cal. Code Regs., tit. 17, § 54342, subd. 3.) Similarly, social skills training enhances skills and addresses deficits in communication and social function.

9. Claimant’s mother has requested that the Service Agency fund social skills training as a means of developing claimant’s social skills so he can participate in community life. (Factual Findings 7, 8, & 12.) The preponderance of the evidence, as set

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<sup>5</sup> The Service Agency submitted in evidence the decision of ALJ Nafarette in OAH Case Number 2010110788. (Ex. 7.) ALJ Nafarette’s ruling that social skills training is a non-medical therapy under section 4648.5, subdivision (a)(4), is not precedential and is based on an evidentiary record not before this ALJ. (See *Pegues v. Civil Service Com.* (1998) 67 Cal.App.4th 95, 105.) Moreover, ALJ Nafarette analyzed the sufficiency of claimant’s school social skills program in the context of determining whether claimant met the exception to the funding suspension under section 4648.5, subdivision (c). That analysis does not bear on this Decision as, on the record here, section 4648.5, subdivision (a), does not apply.

forth in Factual Findings 1 through 11, supports the conclusion that the services in question are not educational services subject to suspension under section 4648.5, subdivision (a)(3), or a non-medical therapy subject to suspension under section 4648.5, subdivision (a)(4).

## LEGAL CONCLUSION

Cause was established under section 4648.5 to require Service Agency funding for social skills training for claimant. (Factual Findings 1-12, and Discussion.)

## ORDER

Claimant David A.'s appeal is granted. SCLARC shall provide funding for social skills training services for claimant until such time as changed circumstances or a new IPP warrant otherwise.

DATE: July 3, 2012



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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.