

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

TYLER E.,

Claimant,

v.

KERN REGIONAL CENTER,

Service Agency.

OAH NO. 2012050776

DECISION

Administrative Law Judge Humberto Flores, Office of Administrative Hearings, heard this matter in Tehachapi, California, on July 3, 2012.

Jeffrey F. Popkin, Associate Director, represented Kern Regional Center (regional center or service agency). Tyler E. (claimant) appeared at the hearing and was represented by his parents.

Evidence was received and the matter was submitted for decision.

ISSUE

Whether the regional center is obligated to continue to fund the cost of claimant's horseback riding lessons provided by the R.I.S.E. program.

FACTUAL FINDINGS

1. Claimant is a 17-year-old consumer of regional center services based on a diagnosis of Autism. He is considered high functioning.

2. Claimant has been taking riding lessons at R.I.S.E. for five years. The regional center has provided funding for these riding lessons throughout this period.

3. On April 23, 2012, the regional center notified claimant in a Notice of Proposed Action that it proposed to terminate the funding for the horse-riding lessons as a result of a change in California law. Specifically, the regional center cited Welfare and Institutions Code section 4648.5, subdivision (a), as support for its decision to terminate funding for claimant's horse-riding lessons.

4. Claimant timely filed a Request for Fair Hearing.

5. The regional center contends that the riding lessons are social or recreational and should be discontinued as directed by Welfare and Institutions Code section 4648.5, subdivision (a).

6. Claimant's mother testified that claimant has poor social skills and has difficulty making friends. Claimant has no friends his own age. Claimant's mother also stated that horseback riding is beneficial for claimant because it requires him to interact with other people in an organized group setting. According to his mother, claimant's social skills have improved, and she attributes this improvement to his participation in the horseback riding program.

7. Claimant's instructor testified that horseback riding is an activity where claimant is forced to overcome his sensory fears. When he started the program, claimant was extremely fearful and unable to cope. Slowly, claimant has been able to overcome his fear of horses. Over the past year, claimant has been taught to ride his horse out of the arena and participate in trail-riding. He has also learned to perform sequential actions required of a horseback rider. In addition when he finishes his lesson, claimant has learned to take the saddle off, brush down the horse and give the horse a bath.

8. Claimant testified how much he looks forward to horseback riding.

9. Claimant's Individualized Education Program (IEP) plan states under the Adaptive Behavior/Self Help section that pursuant to the results of the Adaptive Behavior Assessment System II, claimant's adaptive skills are within the extremely low range of functioning (first percentile). These "results are indicative of significant functional impairments in self-help adaptive behavior skills when compared to similar aged peers." According to the IEP, claimant currently meets with a behaviorist to help improve his safety awareness. His parents stated that claimant is oblivious to his surroundings.

10. In the area of Cognitive/General Ability, claimant's IEP states that "[claimant's] nonverbal cognitive ability was previously assessed with the Universal Nonverbal Intelligence Test (UNIT). Current cognitive estimates are markedly similar to prior testing indicating a marked impairment in overall cognition (score of 67 in the first percentile) when compared with similar aged peers. Tyler could benefit from instructional tasks broken into small steps, frequent repetition and opportunities to practice newly learned skills with immediate corrective feedback."

11. In claimant's annual review dated April 4, 2012, claimant's service coordinator states, "Weather permitting, Tyler participates in the R.I.S.E. (horseback riding) program. The activity provides Tyler with prevocational skill training. Tyler must provide care and maintenance of the animals. Further, Tyler is gaining confidence in his social skill through direction and communication with the animals. The activity gives Tyler confidence, which is helping him in his every day life. This objective is appropriate and will continue on the Individual Program Plan."

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. Notwithstanding the responsibilities imposed on the regional center to ensure that California's developmentally disabled population receives the services and supports required under the Lanterman Act, due to the recent fiscal crisis in California, the Legislature passed Welfare and Institutions Code section 4648.5, which, effective July 1, 2009, suspended the authority of regional center to purchase certain services pending implementation of more permanent budgetary solutions. The targeted services are: 1. camping services and associated travel expenses; 2. social recreation activities, except for those activities vendored as community-based day programs; 3. educational services for children three to 17, inclusive, years of age; and 4. non-medical therapies, including, but not limited to, specialized recreation, art, dance and music. (Welf. & Inst. Code, § 4648.5, subd. (a).) The new statute also provides:

An exemption may be granted on an individual basis 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. (Welf. & Inst. Code, § 4648.5, subd. (c).)

3. It is clear that claimant has benefitted from his participation in horseback riding. This activity has helped claimant to markedly improve his cognitive abilities, adaptive skills, and prevocational skills, which are areas where claimant suffers significant impairment. Improvement in these areas through continuation of the horseback riding program would give claimant life-long benefits. This activity helps him to progressively improve the skills necessary to live independently and to obtain employment in the future. Both of these goals are consistent with claimant's Individualized Program Plan and the Welfare and Institutions Code sections governing the duties and responsibilities of regional centers toward consumers.

4. In this case, the regional center established that the horseback riding lessons are subject to suspension under Welfare and Institution Code section 4648.5, subdivision (a)(2). However, the benefits derived by claimant from the horseback riding lessons establish the existence of "extraordinary circumstances" in that the horseback riding program is a "primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of the [claimant's] developmental disability." Therefore, claimant qualifies for an exemption from the termination of the service.

ORDER

The decision of the Kern Regional Center to terminate funding for horseback riding lessons is overruled. Claimant's appeal granted.

DATED: July 11, 2012

_____/s/_____

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.