

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of :

CLAIMANT,

vs.

NORTH LOS ANGELES COUNTY REGIONAL
CENTER,

Service Agency.

OAH No. 2018020823

DECISION

Ji-Lan Zang, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on April 3, 2018, at Chatsworth, California.

Aaron Abramowitz, Attorney at Law, appeared and represented the North Los Angeles County Regional Center (Service Agency or NLACRC).

Georgianna Junco-Kelman and Jonathan Kelman, Attorneys at Law, appeared and represented claimant.¹ Claimant's mother was also present.

The record was held open until April 24, 2018, for the parties to submit closing briefs. On April 24, 2018, based on a motion from respondent's counsel, the time for filing closing briefs was extended to April 27, 2018. Both parties filed timely closing briefs. The Service Agency's brief was marked for identification as Exhibit 8, and claimant's brief was marked for identification as Exhibit C12.

¹ Claimant and his mother are identified by titles to protect their privacy.

The record was closed and the matter was submitted for decision on April 27, 2018.

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STATEMENT OF ISSUES

The issue in this matter is whether the Service Agency should be required to reimburse claimant's tuition at Exceptional Minds incurred since September 2016 and fund his attendance in the program until his graduation in June 2019.

EVIDENCE CONSIDERED

Documents: Exhibits 1-5, 7; C1-C11.

Official Notice: Exhibit 6

Testimony: Anna Polin, Resource Developer for the Service Agency, and claimant's mother.

FACTUAL FINDINGS

JURISDICTIONAL AND BACKGROUND FACTS

1. On March 24, 2017, the Service Agency issued a Notice of Proposed Action to claimant, notifying him that his request to fund his tuition at Exceptional Minds has been denied. On April 5, 2017, claimant filed a Fair Hearing Request.

2. Claimant is 20 years old. He has been a Service Agency consumer since December 14, 2016, when his case was transferred from San Diego Regional Center (SDRC). His eligibility for regional center services is based on a diagnosis of autism.

3. Claimant and his family moved to Service Agency's catchment area on September 16, 2016. He currently lives with his mother and a sibling. According to claimant's most recent Individual Program Plan (IPP), dated January 17, 2017, claimant

has no behavioral issues and “good adaptive skills.” (Ex. 2, p. 7.) He performs household chores such as doing the laundry, washing dishes, taking out the trash, feeding the family cat, and cleaning his room.

4. Claimant graduated in 2016 from Canyon Crest Academy in San Diego and obtained a high school diploma. Since September 2016, claimant has been a full-time student at Exceptional Minds, a three-year vocational program that prepares young adults on the autism spectrum for careers in digital animation and visual effects.

EXCEPTIONAL MINDS

5. Exceptional Minds is a non-profit organization in Sherman Oaks, California. The parties stipulated to the following facts regarding Exceptional Minds:

1. Claimant is currently enrolled in the Exceptional Minds Program.
2. Exceptional Minds is not currently vendored by any regional center, and they are unlikely to become vendored in the near future.
3. Portions of Exceptional Minds’ programming may be approximated by various Service Agency service providers; however, the program as a whole cannot be.
4. Exceptional Minds appears to be providing claimant with appropriate planning and services as a whole to meet his needs and preferences. (Ex. 7.)

6. Claimant is currently in the second year of the three-year program. According to his progress reports, claimant has excelled academically. He is expected to graduate in June 2019. To date, claimant’s mother has paid Exceptional Minds approximately \$48,000 in tuition for claimant’s attendance in the training program. Claimant is seeking reimbursement of these costs and future funding for the program until his graduation.

7. As stipulated by the parties, Exceptional Minds is not a vendor of any regional center, and is not under contract to provide services to Service Agency

consumers. The Legislature has created a statutory scheme for vrending direct service providers, for rate-setting, and to monitor the services and supports purchased by regional centers for its consumers.² The Department of Developmental Services (DDS) was delegated the authority “to adopt regulations governing the vendorization process to be utilized by the department, regional centers, vendors, and the individual or agency requesting vendorization.”³ Pursuant to that delegation of authority, DDS has adopted regulations applicable to the vendorization process and the contractual provisions required to be included in all service provider agreements with regional centers.⁴

8. Anna Polin, Resources Director with the Service Agency, testified about efforts over the past several years to vendorize Exceptional Minds. Ms. Polin testified that, to be paid by a regional center, a service provider must become a vendor and be assigned a service code, according to the Service Agency’s interpretation of the regulations.⁵ According to Ms. Polin, the Service Agency had first engaged in

² Welf. & Inst. Code, §§ 4648, subd. (a)(3)-(5), 4648.1.

³ Welf. & Inst. Code, § 4648, subd. (a)(3)(B).

⁴ Cal. Code Regs., tit. 17, § 50607-50610.

⁵ A “service provider” is defined in the regulations as a person, program, or entity “vrendored to provide services to regional center consumers.” (Cal. Code Regs., tit. 17, § 50602, subd. (o).) A “vendor” is defined in the regulations as “an applicant which has been given a vendor identification number and has completed the vendorization process.” (Cal. Code Regs., tit. 17, § 54302, subd. (a)(74).) The regulations further provide, “The vrending regional center shall assign a service code to the vendor based upon the program design and/or the services provided.” (Cal. Code Regs., tit. 17, § 54340, subd. (c).)

negotiations with Exceptional Minds to become a vendor approximately four years ago. There have been more negotiations within the past four years, but none has resulted in success.

9. The Service Agency proposed to Exceptional Minds various service codes with rates established by the regulations adopted by DDS. However, Exceptional Minds decided to not become a regional center vendor, primarily because the payment rates were too low and it did not want to be subject to any of the auditing requirements for regional center vendors.⁶ For Exceptional Minds to be paid its usual and customary rate, the regulations provide that at least 30 percent of its students must be non-consumers of a regional center.⁷ Anticipating that more than 70 percent of its students may be consumers of a regional center, the organization is unwilling to apply for vendorization under these terms and conditions.

CLAIMANT'S MOVE TO SERVICE AGENCY'S CATCHMENT AREA

10. On September 16, 2016, claimant and his family moved to Service Agency's catchment area in order to allow him to attend college. Prior to September 16, 2016, claimant was a consumer of SDRC.

11. An IPP from SDRC was not submitted. However, claimant's mother admitted that funding for claimant's attendance at Exceptional Minds was not a part of any IPP with SDRC. Claimant's mother testified that after claimant graduated from high school in June 2016, she discussed with SDRC claimant's move to the Sherman Oaks area to pursue his post-high school education sometime in July or August. The discussions focused on a plan to obtaining residential housing for claimant after he

⁶ Welf. & Inst. Code, § 4648.1.

⁷ Cal. Code Regs., tit. 17, § 57210, subd. (a)(19).

relocated to Sherman Oaks. There was no indication, either in claimant's mother's testimony or the consumer I.D. notes from SDRC, that any specific requests were made by claimant's family for SDRC to fund claimant's tuition at Exceptional Minds prior to his enrollment in the program.

12. A. Indeed, the consumer I.D. notes from SDRC showed that claimant's family originally intended to fund claimant's tuition at Exceptional Minds with a family trust. Funding for claimant's residence at a group home, should he decide to move to the Sherman Oaks area by himself, was discussed with SDRC. Eventually, however, claimant's mother decided to move the entire family to Sherman Oaks to support claimant, and the issue of funding for claimant's residence at a group home became moot.

B. Specifically, a consumer I.D. note from June 9, 2016, indicated that claimant's service coordinator from SDRC met with claimant's mother regarding her son's case and on-going services. The note stated:

[Claimant] and his mother informed the SC [service coordinator] that [claimant] was accepted into a private film school located in Sherman Oaks called Exceptional Minds. He is scheduled to begin in August 2016. [Claimant's mother] was worried that she would need to relocate the entire family to accommodate [claimant] going to school. However, the planning team discussed [claimant] relocating to the Sherman Oaks area by himself and residing with an AFHA or level 2 male group home. [Claimant] was hesitant with the idea but became more optimistic when SC provided him with step-by-step instructions of how placement services worked. . . . (Ex.4, p. 38.)

C. On July 25, 2016, in a telephone call with his service coordinator, claimant told SDRC that the new trustee of the family trust did not want to provide him with the funds he needed to relocate.

D. On July 26, 2016, SDRC contacted the Service Agency regarding claimant's placement options in Sherman Oaks. SDRC did not receive a reply from the Service Agency because a new transfer coordinator had just been hired.

E. On August 17, 2016, claimant's service coordinator from SDRC met with claimant and his mother. Claimant's father also participated in the meeting by speaker phone. The note from that meeting states, in pertinent part: "[Claimant] has yet to receive the financial trust funds [from the family trust] needed to pay his semester tuition with the Exception Minds program in Sherman Oaks, CA. In addition, he require[s] additional trust funds to live off (e.g. pay rent). [Claimant] along with his mother and brother [are] in transition to relocate to the Sherman Oaks area. . . ." (Ex. 4, p. 43.)

TRANSFER OF CLAIMANT'S CASE TO THE SERVICE AGENCY AND THE REQUEST FOR FUNDING

13. Sometime in November 2016, on a date not established by the record, SDRC completed its paperwork to transfer claimant's case to the Service Agency. On December 14, 2016, claimant's transfer from SDRC to the Service Agency was complete.

14. On January 9, 2017, claimant's mother contacted the Service Agency and spoke to the service coordinator assigned to claimant's case, Yenniferd Corado (Corado), in order to obtain independent living services (ILS) for her son. During this conversation, an in-person meeting scheduled for January 17, 2017, was arranged. According to the Consumer I.D. Notes written by Corado, the January 17 meeting was intended to be an

IPP meeting. However, according to claimant's mother, her understanding was that the meeting was only introductory in nature and not meant to result in an IPP.

15. A. On January 17, 2017, claimant and his mother met with Corado at claimant's home. As a result of the meeting, Corado drafted a six-page plan, which was deemed by the Service Agency as an IPP. (Ex. 4.) However, claimant's mother denied that the document was an IPP. Claimant's mother asserted that, at the time of the meeting, she was never given the full report for review and was only given the signature page, which she signed, under the impression that it was only to indicate her participation in the January 17, 2017 meeting.

B. Nonetheless, it is undisputed that at the January 17 meeting, claimant's mother requested funding from the Service Agency for claimant's attendance at Exceptional Minds. The IPP states, "[Claimant's mother] did request for NLACRC to fund Exceptional Minds tuition. CSC [Corado] informed [claimant] that the request will be discussed with Consumer Service Supervisor. . . ." (Ex. 3, p. 8.) Claimant's mother also testified that at this meeting, she asked the Service Agency to fund claimant's tuition and transportation costs for his attendance at Exceptional Minds. Corado told claimant's mother that if Exceptional Minds is not a vendor, then the tuition could not be funded, although the Service Agency would fund claimant's attendance at a community college.

C. The IPP report was otherwise devoid of any services that the participants agreed to, despite claimant's mother's request for ILS.

16. On January 27, 2017, Corado made contact with claimant's mother by e-mail and informed her that the Service Agency would reimburse claimant for the transportation costs to Exceptional Minds if claimant used dial-a-ride. With regard to the funding for tuition at Exceptional Minds, however, Corado notified claimant's mother that Exceptional Minds is not a vendor with the Service Agency and therefore, funding would be denied.

17. On February 24 and 27, 2017, representatives from the Service Agency and claimant's mother discussed by telephone the denial to fund claimant's tuition at Exception Minds and how to appeal the decision.

18. On March 22, 2017, the Service Agency informed claimant, by letter, that his request to fund his tuition at Exceptional Minds was denied. The letter further noted, "In regards to [claimant's] preferred plan of employment and vocational training in the field of audio and video editing graphics and animation there are several colleges and vocational instructional programs: Los Angeles Mission Community College, California State University-Northridge, and Los Angeles Valley College and West Valley Occupational Center. The community colleges offer financial aid, student academic and counseling assistance." (Ex. 1, p. 4.)

19. On April 5, 2017, claimant's mother filed the Fair Hearing Request regarding the Service Agency's denial to fund claimant's attendance at Exceptional Minds.

20. On April 14, 2017, Corado sent the January 17, 2017 IPP to claimant's mother by e-mail. Claimant's mother felt, in her words, "deceived" upon receiving the IPP because she did not believe that the January 17 meeting was an IPP meeting. Additionally, the IPP did not list any services for claimant, although she had requested ILS for claimant. Claimant's mother called Corado's supervisor to express her displeasure with the situation. In response, Corado's supervisor gave claimant's mother the names of several vendors who offered ILS. Furthermore, Corrado's supervisor assured claimant's mother that another meeting to amend the IPP could be scheduled. However, a meeting to amend the IPP was never scheduled between the parties.

ADDITIONAL FACTUAL FINDINGS BASED ON CLAIMANT'S MOTHER'S TESTIMONY

21. Claimant's mother testified at the hearing regarding her son's condition and the circumstances surrounding his enrollment at Exceptional Minds. Claimant was

diagnosed with autism when he was six years old and became a regional center consumer at age 12 or 13. Claimant's mother described her son's greatest strengths as his diligence and his ability to remember and retain skills that are taught to him. However, claimant lacks social skills, communication skills, and the ability to interact with others. For example, claimant has a difficult time understanding sarcasm.

22. Claimant has an interest in film making, acting, and he wants to be a part of the entertainment industry. Upon his graduation from high school, claimant considered several programs that may have matched his interests. He considered media programs at the University of California at Los Angeles (UCLA), University of Southern California (USC), and California State Long Beach (Cal State Long Beach), as well as Exceptional Minds. However, the programs at UCLA and USC were not appropriate for claimant because they did not offer any additional assistance for students with autism. Claimant also did not choose Cal State Long Beach because the tuition was approximately \$100,000 per year and the program was not specific to the entertainment industry. At that time, claimant did not consider any media programs at community colleges. Claimant's mother testified that after she received the March 22, 2017 letter from the Service Agency denying funding for Exceptional Minds, she did not explore any of the alternative community college and vocational instruction programs proposed by the Service Agency, such as Los Angeles Mission Community College, California State University-Northridge, and Los Angeles Valley College and West Valley Occupational Center.

23. During cross-examination, claimant's mother admitted that neither SDRC nor the Service Agency had urged claimant to enroll in Exceptional Minds. Additionally, neither SDRC nor the Service Agency had promised claimant that it would fund his tuition at Exceptional Minds.

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LEGAL CONCLUSIONS

STANDARD OF PROOF

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, §§ 4500 et seq.) The standard of proof in this case is the preponderance of the evidence, because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, §115.)

2. When one seeks government benefits or services, the burden of proof is on him. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) In this case, claimant requests funding that Service Agency has not before agreed to provide and therefore he has the burden of proving by a preponderance of the evidence that he is entitled to that funding.

STATUTORY FRAMEWORK

3. The Lanterman Act sets forth a regional center's obligations and responsibilities to provide services to individuals with developmental disabilities. As the California Supreme Court explained in *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388, the purpose of the Lanterman Act 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." Under the Lanterman Act, regional centers are "charged with providing developmentally disabled persons with 'access to the facilities and services best suited to them throughout their lifetime'" and with determining "the manner in which those services are to be rendered." (*Id.* at p. 389, quoting from Welf. & Inst. Code, § 4620.)

4. To comply with the Lanterman Act, a regional center must provide services and supports that “enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age.” (Welf. & Inst. Code, § 4501.) The types of services and supports that a regional center must provide are “specialized 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.” (Welf. & Inst. Code, § 4512, subd. (b).) The determination of which services and supports the regional center shall provide is 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.” (*Ibid.*) However, regional centers have wide discretion in determining how to implement an IPP. (*Association for Retarded Citizens, supra*, 38 Cal.3d at p. 390.)

5. As set forth in Welfare and Institutions Code section 4646, subdivision (a):

It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the

provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

RETROACTIVE REIMBURSEMENT OF CLAIMANT'S TUITION FROM SEPTEMBER 2016 TO JANUARY 2017

6. On January 17, 2017, claimant requested that the Service Agency fund his tuition at Exceptional Minds from the time of his enrollment in September 2016 until his expected graduation in September 2019. Claimant's request for reimbursement of his tuition from the time of his enrollment (September 2016) to the time of his request to for funding (January 2017) is a request for retroactive service authorization.

7. The Lanterman Act does not specifically authorize retroactive service authorization in the fair hearing context. A purchase of service authorization must be obtained in advance from the regional center for all services purchased out of center funds. (Cal. Code Regs., tit. 17, § 50612.) A retroactive authorization is allowed for emergency services "if services are rendered by a vendored service provider: (A) At a time when authorized personnel of the regional center cannot be reached by the service provider either by telephone or in person (e.g., during the night or on weekends or holidays); (B) Where the service provider, consumer, or the consumer's parent, guardian or conservator, notifies the regional center within five working days following the provision of service; and (C) Where the regional center determines that the service was necessary and appropriate." (Cal. Code Regs., tit. 17, § 50612, subd. (b)(1).)

8. Thus, the regulations suggest that retroactive funding is only available when either the service has been preauthorized or in limited emergency situations before such authorization can be obtained. Here, the Service Agency did not

preauthorize claimant's tuition at Exceptional Minds, nor was any evidence presented to indicate that claimant's case constituted an emergency situation.

9. A. Ordinarily, services are provided to the consumer through the IPP process. The consumer's IPP "shall be reviewed and modified by the planning team . . . as necessary, in response to the person's achievement or changing needs, . . ." (Welf. & Inst. Code, § 4646.5, subd. (b).) The planning process relative to an IPP shall include, among other things, "[g]athering information and conducting assessments to determine the . . . concerns or problems of the person with developmental disabilities." (Welf. & Inst. Code, § 4646.5, subd. (a).)

B. The process of creating an IPP, by its nature, is collaborative. (Welf. & Inst. Code, § 4646.) The IPP is created after a conference consisting of the consumer and/or his family, service agency representatives and other appropriate participants. (Welf. & Inst. Code, §§ 4646, 4648.) If the consumer or his parents do not agree with all components of an IPP, they may indicate that disagreement on the plan. (Welf. & Inst. Code, § 4646, subd. (g).) If the consumer or his parents do "not agree with the plan in whole or in part, he or she shall be sent written notice of the fair hearing rights, as required by Section 4701." (Welf. & Inst. Code, § 4646, subd. (g).)

C. The issue of retroactive reimbursement must be carefully considered to avoid the circumvention of the IPP process, which is one of the cornerstones of the Lanterman Act. A regional center is required and legally obligated to participate in the decision-making process before a service is implemented or expenses for it incurred. Generally, a family cannot unilaterally incur a service cost without regional center input or authorization and expect to be reimbursed.

10. Yet, the lack of specific statutory authorization is not necessarily dispositive of the issue. In the fair hearing context, an ALJ is empowered by statute to resolve "all issues concerning the rights of persons with developmental disabilities to

receive services under [the Lanterman Act]. . . ." (Welf. & Inst. Code, § 4706, subd. (a).) That statutory provision may be broad enough to encompass the right to retroactive benefits. However, pursuant to the general principles articulated in *Association for Retarded Citizens, supra*, 38 Cal.3d 384, if the Lanterman Act is to be applied as the Legislature intended, reimbursement should only be available when the purposes of the Lanterman Act would be supported. Otherwise, the general requirements that services should be funded through the IPP process (Welf. & Inst. Code, §§ 4646, 4646.5, and 4648) would be made superfluous. Thus, prior decisions in other fair hearing cases have included orders for reimbursement when the equities weighed in favor of the consumer and/or when the purposes of the Lanterman Act would be thwarted if not granted.⁸

11. A. Claimant contends that the equities weigh in favor of reimbursing him for his tuition at Exceptional Minds. (Ex. C12, pp. 26-28.) This argument was not compelling.

B. Generally, four elements must be established in order to apply the doctrine of equitable estoppel: (1) The party to be estopped must be apprised of the facts; (2) the party must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) the party must rely upon the conduct to his injury. (*City of Long Beach v. Mansell* (1970) 3 Cal.3d 462.) A vital principle of equitable relief is detrimental reliance, or as put by the California Supreme Court in the case *Seymour v. Oelrichs* (1909) 156 Cal. 782, 795: "He who by his language or conduct leads another to do what he would not otherwise have done shall not subject such person to loss or injury by disappointing the expectations upon which he acted."

⁸ Prior OAH decisions pertaining to other consumers are only advisory, not binding.

C. There was no evidence to show that, by enrolling claimant in the Exceptional Minds program, his family acted in reliance on any conduct or advice given by SDRC or the Service Agency. Neither SDRC nor the Service Agency made any representation to suggest that claimant's family would have the right to reimbursement for his tuition. Claimant's family was aware of the expense involved in the Exceptional Mind program, discovered as a result of their own research and not on any recommendation of the Service Agency. There is no evidence that the family made any inquiry or was given any misleading advice by the Service Agency before acting on their own to enroll claimant at Exceptional Minds in September 2016.

12. Claimant presented evidence about the Service Agency's failure to complete the IPP process in a timely fashion once his case was transferred from SDRC to the Service Agency. Indeed, the Service Agency did not clarify to claimant's mother that the January 17, 2017 meeting was intended to be an IPP meeting, and a written report was not provided to claimant's mother until approximately three months later, on April 4, 2017. The IPP was also devoid of any services that the parties agreed to, despite claimant's mother's request for ILS. However, the issue at hand is funding for claimant's tuition at Exceptional Minds, not the provision of ILS or the propriety of the IPP process. Equitably estopping an agency from taking administrative action on the grounds of negligence is appropriate only when agency error "causes a claimant to fail to comply with a procedural precondition to eligibility, and the failure to invoke estoppel would cause great hardship to the claimant." (*Lentz v. McMahon* (1989) 49 Cal.3d 393, 402-403.) Here, the Service Agency was slow to formally confirm the denial of claimant's request for funding by administrative action and may have failed to comply with the time requirements of the IPP process, but it did not cause claimant to fail to comply with any procedural precondition.

13. Denying retroactive authorization and reimbursement in this case also will not thwart the purposes of the Lanterman Act. As discussed above, the funding and provision of services and supports to a regional center consumer is supposed to be collaborative. Yet, claimant's family failed to bring up funding for claimant's tuition for Exceptional Minds with SDRC as soon as the family learned about the service and before actually enrolling him in the program. The record reflected that claimant's family originally intended to privately fund claimant's tuition with a family trust, and therefore, no specific funding request was made to SDRC. (Factual Findings 12.) If, in fact, claimant's family had intended for a regional center to fund claimant's tuition at Exceptional Minds, then they should have immediately advised claimant's service coordinator at SDRC of this intent before taking unilateral action and enrolling claimant in the program.

14. Therefore, cause does not exist to reimburse claimant's tuition at Exceptional Minds from the time of his enrollment at Exceptional Minds (September 2016) to time of the request to the Service Agency for funding (January 2017). Claimant satisfied none of the criteria set forth at California Code of Regulations, title 17, section 50612, subdivision (b)(1), for retroactive authorization. Additionally, the equities do not weigh in favor of granting claimant reimbursement.

FUNDING FOR CLAIMANT'S TUITION FROM JANUARY 2017 TO JUNE 2019

15. During the meeting on January 17, 2017, claimant requested that the Service Agency fund his tuition at Exceptional Minds. Claimant also seeks prospective funding of his tuition until his expected graduation in June 2019.

16. Welfare and Institutions Code section 4646.4, subdivision (a), provides, in relevant part:

Regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's individual program plan developed pursuant to Sections 4646 and 4646.5, or of an individualized family service plan pursuant to Section 95020 of the Government Code, the establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and when purchasing services and supports, shall ensure all of the following:

[¶] . . . [¶]

(2) Utilization of generic services and supports when appropriate. . . .

17. Welfare and Institutions Code section 4648, subdivision (a)(8) provides:

Regional center funds shall not be used to supplant the budget of any agency that has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services.

18. In other words, a regional center is required to identify and pursue all possible funding sources for its consumers from other generic resources, and to secure services from generic sources where possible. In this case, after claimant made the funding request for Exceptional Minds, the Service Agency suggested to claimant several generic resources that could serve as alternatives for Exceptional Minds, namely, the audio and video editing, graphics and animation programs at Los Angeles Mission Community College, California State University-Northridge, and Los Angeles Valley

College, and West Valley Occupational Center. However, as claimant's mother admitted during her testimony, none of these options have been explored.

19. As stipulated by the parties, Exceptional Minds is a unique program that as a whole, cannot be approximated by other regional center vendors and generic programs. Additionally, Exceptional Minds appears to be providing claimant with appropriate programming and services. Nevertheless, there was no showing that the generic sources proposed by the Service Agency, though not exact replicas of Exceptional Minds, do not meet claimant's needs and cannot also provide him with appropriate programming and services.

20. Therefore, cause was not shown to authorize funding under Welfare and Institutions Code sections 4646.4, subdivision (a), and 4648, subdivision (a)(8) because claimant's family chose not to pursue or utilize generic resources proposed by the Service Agency and chose to instead seek funding for Exceptional Minds, a vocational program of their own choosing.

CONCLUSION

21. Both parties' closing briefs discussed at length whether a regional center may contract with a non-vendor. However, given the foregoing, that issue is moot.

22. Claimant's family chose to enroll claimant in the unique program at Exceptional Minds based on their own initiative, and not in reliance on any conduct or representations made by the Service Agency. Furthermore, there was no evidence that generic resources were considered to meet claimant's needs. Accordingly, the Service Agency is not obligated to provide funding, as a matter of law or equity, or to reimburse claimant's family for his attendance at Exceptional Minds.

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ORDER

Claimant's appeal is denied.

The Service Agency is not required to fund claimant's tuition at Exceptional Minds or to reimburse his family's out-of-pocket expenses incurred since September 2016.

DATED:

JI-LAN ZANG

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision. This decision binds both parties. Either party may appeal this decision to a court of competent jurisdiction within 90 days.