

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

Vs

WESTSIDEREGIONAL CENTER,
Service Agency.

OAH No. 2018081187

DECISION

Jennifer M. Russell, Administrative Law Judge, Office of Administrative Hearings, heard this matter in Los Angeles, California on October 24, 2018. Lisa Basiri, M.A., Fair Hearing Specialist, represented Westside Regional Center (WRC or service agency). Mother represented Claimant.¹

Testimonial and documentary evidence was received, the case was argued, and the matter was submitted for decision at the conclusion of the administrative hearing. The Administrative Law Judge makes the following Factual Findings, Legal Conclusions, and Order dismissing Claimant's appeal.

ISSUE

Whether the service agency should retroactively fund Claimant's participation in the Help Group's Miracle Project between November 7, 2016 and April 30, 2018?

¹ Claimant and Mother are not identified by their names to preserve confidentiality. Mother received Spanish language interpretation services.

FACTUAL FINDINGS

1. Claimant is a 12-year-old consumer of WRC. In April 2016, when Claimant was a 10-year-old, he was diagnosed with Autism Spectrum Disorder. He is fully ambulatory. He is independent in most areas of self-help. He presents with scripting—the repetitive recitation of dialogue from cartoons, television shows, or film.

2. Mother and Claimant's father are divorced; they have joint legal custody of Claimant and his sibling. Joint legal custody requires Claimant's parents, among other things, "to keep each other informed about matters pertaining to the welfare of their child and . . . to cooperate with each other in making decisions that affect the child." (Exh. D.) Claimant primarily resides with Mother when he does not spend predetermined nights and weekends at his father's residence. He attends school where, in accordance with an Individualized Education Program, he receives several services including speech and language therapy, recreational therapy, and intensive behavioral intervention.

3. In spring 2016, the service agency conducted an assessment of Claimant. By letter dated May 10, 2016, the service agency notified Mother that Claimant was found eligible for services and supports. (Exh. H.) In a May 17, 2016 email, a recreation therapist from Claimant's school district advised Mother that "if [Claimant] is accepted as a client at Westside Regional Center, it would be great to get him into a social skills and Theatre class program. This will enable him to learn social skills but also to channel his scripting in a positive way." (Exh. C.)

4. Claimant's initial Individual Program Plan (IPP), dated June 29, 2016, notes, in a section titled *Social-Emotional/Recreation/Leisure/Plan Community*, which includes a discussion of his scripting behavior, that Claimant "does not interact with others on a consistent basis, often engages in preferred off topic conversations, and demonstrates difficulty staying on task." (Exh. 13 at p. 6.) The initial IPP contains the following stated outcome: Claimant "will continue to develop social skills and consistently participated in

activities in order to engage in meaningful and fulfilling interactions on a consistent basis.” (*Id.* at p. 14.) To achieve that outcome, the initial IPP provides that Claimant’s family “will explore recreational and leisure activities and providing [*sic*] opportunities for peer interactions.” (*Id.*)

5. On November 7, 2016, Mother enrolled Claimant at The Help Group’s Miracle Project, which is described in a fall 2016 brochure as follows:

Highly-acclaimed, award-winning creative arts program that enables children and teens with autism and other special needs to express themselves through music, dance, film, writing, and acting. Social skills and creativity soar while working together to create and perform an original musical production.

(Exh. K.)

6. The Help Group’s *Kids Like Me Application* for the Miracle Project queries, “What are your goals for your child while they are involved with this program?” Mother provided the following response:

Channel his scripting about stories/movies—what he’s read & seen into performance. He is naturally dramatic/can run dialogue, accents, physical gestures of characters—needs to be channeled into acting, performance.

(Exh. J.)

7. For at least two years, Claimant participated in the Help Group’s Miracle Project, and during the course of his participation no assessment or progress report was

provided to the service agency until June 2018, when Mother presented WRC with an invoice from the Help Group for services provided to Claimant in Fall 2016, Spring 2017, Fall 2017, Winter 2018, and Spring 2018 along with a May 2018 Social Skills Intervention Progress Report, and Mother requested WRC to reimburse her for the invoice amount totaling \$1,345. Mother provided WRC with no proof of her actual payment of the invoiced amount.

8. The Miracle Project May 2018 Social Skills Intervention Progress Report, which appears to include the period 2016 through 2017, describes the following areas of concern for Claimant:

The main area of concern for [Claimant] continues to be his "scripting," when he will run dialogue from a film or television show that he has seen for long periods of time. He is easily distracted by his "stories," and it is difficult at times to bring him out of his stories/scripting to focus on his school work, chore, or task at hand. . . . [Claimant] also exhibits this behavior during the Miracle Project Theater and Improv classes, and it is difficult to focus him on the task or assignment at hand. Through comprehensive behavior therapy and special education services via [Claimant's school district], these issues are being addressed.

(Exh. 7.)

9. The Miracle Project May 2018 Social Skills Intervention Progress Report reviews specific enumerated goals for Claimant, and reports that he has met, for example, Goal #2, which requires him to "participate in class activities without scripting in 3 out of 5 (60%) of given opportunities."

This goal has been met. Per interventionist report, [Claimant] is beginning to script less. He continues to require support to help bring him out of his scripting and focus on the activity at hand. Nonetheless, with moderate prompting [Claimant] is able to meet this goal in 3 out of 5 of given opportunities.

(Id.)

10. WRC denied Mother's request for reimbursement. Mother, acting on behalf of Claimant, requested a fair hearing. Thereafter, this administrative proceeding ensued.

11. In November 2016, the time when Mother enrolled Claimant in the Help Group's Miracle Project, the Help Group's Miracle Project was not vendored to provide any services to its consumers. The service agency funded social skills training for Claimant through Leaps N Boundz, a vendored provider.

12. In January 2017, Leaps N Boundz conducted an initial evaluation of Claimant's awareness of self, awareness of others, awareness of emotions, memory, and play. During the evaluation Claimant's father participated in a parent interview in which he informed the evaluator that "outside of school, [Claimant] does not have friends, other than his brother," that he "is trying to find friends for [Claimant]," and that he "feels the greatest barrier to making friends has been [Claimant's] scripting." (Exh. 10.) On February 8, 2017, Leaps N Boundz commenced social skills training for Claimant at a frequency of five sessions per month. Leaps N Boundz established specific goals for Claimant that correspond to the five areas in which Claimant was assessed—self-advocacy while in a group setting without prompting in 80 percent of trials; asking questions of others to gain information about the other individual when in a social setting without prompting in 80 percent of trials; identifying the facial expressions of others upset or annoying others while

in a social setting without prompting in 80 percent of trials; recalling events that occurred prior to session while in the social setting 80 percent of trials; and initiating play with one other peer while in a social setting without prompting 80 percent of trials.

13. Approximately eight months after Leaps N Boundz commenced social skills training for Claimant, in September 2017, the Help Group's Miracle Project became a vendored provider of services for WRC's consumers. No evidence offered at the administrative hearing established that there was any request to change Claimant's social skills training provider from Leaps N Boundz to the Help Group's Miracle Project.

14. Leaps N Boundz continued providing Claimant with WRC-funded social skills training for the next five months. Leaps N Boundz apprised the service agency of Claimant's progress with reports for the period February 2017 through July 2017 (Exh. 9) and for the period August 2017 through February 2018 (Exh. 8). Both progress reports tout significant gains Claimant made during their respective reporting periods. Both progress reports note Claimant's father's involvement as a factor contributing favorably to Claimant's progress.

15. Subsequent to his initial June 29, 2016 IPP, Claimant has had two annual IPPs, which both mention the Miracle Project in discussions addressing Claimant's social skills. An April 6, 2017 annual IPP contains the following discussion:

[Claimant] demonstrates the following socially appropriate skills: following directions and procedures, accepting and respecting authority, cooperating well in a group situation, showing dependability, taking responsibility, exercising self-control, resolving conflicts appropriately and demonstrating fair play and appropriate social interactions with peers. However, [Claimant] does not interact with others on a consistent basis, often engages in preferred off topic

conversations, and demonstrates difficulty staying on task. Since his participation in The Miracle Group's theatre program in October 2016, he is reported to have made progress in increasing his ability to stay focused on tasks and he is "channeling his scripting in positive ways." [Claimant] can name several peers whom he likes, both from his theatre group and his school (from both special day and general education classes). He is expected to participate in an improve class for eight weeks. Father expressed concerns with [Claimant's] ability to express complex emotions. [Claimant] is also participating in social skills training through Leaps N Boundz on Saturdays.

(Exh. 12.)

16. An April 16, 2018 annual IPP contains an identical discussion, except that after noting that Claimant engages in preferred off topic conversations, it states the following:

He may require reminders to transition from one activity to another as his awareness of changes to his surrounding may be limited. [Claimant] continues to participate in The Miracle Group's theatre program (since October 2016) and continues to make progress in increasing his ability to stay focused on tasks and on 'channeling his scripting in positive ways.' [Claimant] can name several peers whom he likes, both from his theatre group and his school (from both special day and

general education classes). [Claimant] is also participating in social skills training through Leaps N Boundz on Saturdays.

(Exh. 11.)

17. Both annual IPPs provide for WRC-funded social skills training through Leaps N Boundz. The April 16, 2018 annual IPP, in particular, contains the following directive: "WRC will fund social skills through Leaps N Boundz at 5 sessions per month effective 07/01/17-02/28/18 and 10 sessions per month effective 03/01/18-08/31/18. The need for service will be reviewed based on progress report submitted by the vendor and will be re-authorized if determined to be appropriate." (Exh. 11.) No funding for the Help Group's Miracle Project is provided for in the April 6, 2017 annual IPP or in the April 16, 2018 annual IPP. The service agency maintains that any funding of Claimant's participation in the Miracle Project constitutes a duplication of services.

18. At the administrative hearing, Mother maintained that it was Claimant's father who sought services from Leaps N Boundz. She believed she made clear to Claimant's service coordinator that she had no objections to Leaps N Boundz as a complementary social skills training program to the Help Group's Miracle Project. Her priority was to channel Claimant's scripting into a theatrical expression because her understanding is that scripting serves as a coping mechanism for Claimant when he is stressed. Mother regarded Leaps N Boundz as the duplicative service.

19. Mother detailed how the Miracle Project benefitted Claimant. She noted an immediate improvement in Claimant's socialization in his school setting. When Claimant engaged in scripting, his behavior was regarded as practice for his acting project, and therefore less alienating. She reported that at the Miracle Project Claimant socialized with his peers, and that at school Claimant socialized with neuro-typical children.

20. Mother contended that Claimant's service coordinator repeatedly

represented to her that WRC would reimburse her out-of-pocket-expenditure for social skills training provided to Claimant through the Miracle Project. The service agency offered no evidence rebutting Mother's contention. Rather, the service agency maintained that it is prohibited by statute and regulation from reimbursing the purchase of services without prior written authorization, except in cases where, unlike this matter, emergency services are necessary and appropriate.

LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) mandates 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 of life in the community." (Welf.& Inst. Code, § 4501.) Regional centers play a critical role in the coordination and delivery of services and supports for persons with disabilities. (*Id.* at § 4620 et seq.) Regional centers are responsible for taking into account individual consumer needs and preferences, and for ensuring cost effectiveness. (*Id.* at §§ 4646, 4646.5, 4647, and 4648.) To provide uniformity and consistency, regional centers are mandated to develop best practices for use when purchasing services and supports for consumers and families. (*Id.* at § 4620.3, subd. (a).)

2. The services and supports to be funded for a consumer are determined through the individualized program planning process, which involves collaboration with the consumer and service agency representatives. The planning process includes gathering information and conducting assessments. (*Id.* at § 4646.5, subd. (a).)

3. Services and supports for persons with developmental disabilities are defined as "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.” (*Id.* at § 4512, subd. (b).) Services and supports include “social skills training.” (*Id.*)

4. Vendorization or contracting is the process for the identification, selection, and utilization of any individual or agency providing services and supports to accomplish all or part of a regional center consumer’s individualized program plan. (*Id.* at § 4648, subd. (a) (3).) Specifically, regional centers are authorized to “reimburse an individual or agency for services or supports provided to a regional center consumer if the individual or agency has [an established] rate of payment for vendored or contracted services . . . , and is providing services pursuant to an emergency vendorization or has completed the vendorization procedures or has entered into a contract with the regional center and continues to comply with the vendorization or contracting requirements.” (*Id.*)

5. Regulations governing the vendorization process provide, among other things, the following:

(a) A purchase of service authorization shall be obtained from the regional center for all services purchased out of center funds. This requirement may be satisfied if the information is provided, sent, or delivered, as the case may be, in an electronic record capable of retention by the recipient at the time of receipt.

(b) The authorization shall be in advance of the provision of service, except as follows:

(1) A retroactive authorization shall be allowed for emergency services if services are rendered by a vendored service provider. [¶ . . . ¶]

(c) The authorization for the purchase of service shall be in the following form:

(1) The authorization shall be in writing, except as follows:

(A) A verbal authorization by the regional center director or his authorized agency representative shall be allowed to provide emergency services utilizing the following procedures:

1. An immediate notation is made in the case record showing the date and nature of such authorization; and
2. The verbal authorization is confirmed with a written authorization from the regional center as soon as possible, but no later than the regional center's next cyclical production of purchase of service authorization documents.(Calif. Code Regs., tit 17, § 50612.)

6. As the party seeking funding under the Lanterman Act for services or supports, Claimant bears the burden of establishing his entitlement to such funding by preponderance of the evidence. (Evid.Code, § 500.)² Claimant has not met his burden.

7. Claimant may have benefitted from his participation in the Help Group's Miracle Project. (Factual Finding 19.) Nonetheless, the Help Group's Miracle Project was not a vendored provider of services for WRC consumers when Claimant was enrolled in the Help Group's Miracle Project in November 2016 through September 2017.(Factual Findings 11 and 13.)There was no contract between the Help Group's Miracle Project and WRC during that period of time. (See Legal Conclusion 4.)There was no written authorization for any purchase of social skills training service to be provided through the Help Group's Miracle Project for Claimant during thatperiod of time. (See Legal Conclusion 5.)There was no emergency justifying exemption from the requirement of prior written authorization for the purchase of service during that period of time. (See Legal Conclusion 5.)Retroactive

² Evidence Code section 500 provides that "a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting."

authorization is permissible only when services are rendered by a vendored provider (*ibid.*), which the Help Group's Miracle Project was not during that period of time. WRC therefore lacks statutory and regulatory authority to fund services provided to Claimant through the Help Group's Miracle Project during that period of time. WRC cannot circumvent the requirements governing the purchase of service by reimbursing Mother's out-of-pocket expenditures in connection with Claimant's participation in a program offered through an entity that was not vetted through the vendorization process set forth in the Lanterman Act and its regulations. WRC is prohibited from doing indirectly what it cannot do directly.

8. It is not relevant to the resolution of the issue addressed in this matter which of Claimant's legal custodial parent requested Leaps N Boundz as Claimant's social skills training provider or whether Claimant's parents are cooperative with each other in matters pertaining to Claimant's welfare. The fact of the matter is that implementation of Claimant's IPP requires WRC to provide Claimant with social skills training services. (Factual Finding 17.) The Lanterman Act mandates that WRC does so through a vendored service provider, and WRC has done that. WRC has been funding social skills training services for Claimant through Leaps N Boundz, a vendored agency, since February 8, 2017. (Factual Findings 12 and 14.) In September 2017, when the Help Group's Miracle Project became a vendored provider of services for WRC consumers, no one suggested or requested that WRC should replace Leaps N Boundz with the Help Group's Miracle Project as Claimant's social skills training provider. Indeed, while expressly providing for WRC-funded social skill training services for Claimant through Leaps N Boundz, Claimant's annual IPP dated April 16, 2018, which covers a period of time since the Help Group's Miracle Project's vendorization, merely notes his participation in the Help Group's Miracle Project, that he was reportedly making progress in his ability to stay focus on task, and that he was channeling his scripting in positive ways. (Factual Findings 16 and 17.)

9. The Lanterman Act prohibits cost ineffective purchase of services. (Legal

Conclusion 1.) Any payment of WRC funds to Leap N Boundz and to the Help Group's Miracle Project for the both of them to provide Claimant with social skills training services is duplicative and therefore cost ineffective.

10. By reason of Factual Findings 1 through 20 and Legal Conclusions 1 through 9, cause does not exist to grant Claimant's appeal.

ORDER

1. Claimant's appeal is dismissed.
2. Westside Regional Center shall not fund retroactively the cost of Claimant's participation in the Help Group's Miracle Project during the period November 7, 2016 through April 30, 2018.

DATED:

JENNIFER M. RUSSELL
Administrative Law Judge
Office of Administrative Hearings

NOTICE

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