

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

AMY E.,

Claimant,

v.

WESTSIDE REGIONAL CENTER,

Service Agency.

OAH Case No. 2012040415

DECISION

Administrative Law Judge Jankhana Desai, Office of Administrative Hearings, State of California, heard this matter on May 1, 2012, in Culver City, California.

Amy E.¹ (Claimant) was not present at hearing; she was represented by her parents, Richard E. (Father) and Pattie E. (Mother). Fair Hearing Coordinator Lisa Basiri represented the Westside Regional Center (WRC or Service Agency).

This matter was consolidated with the case of *In the Matter of Amy E. v. Westside Regional Center*, OAH No. 2012040416, and these two cases were heard together by agreement of both parties.

Oral and documentary evidence was received and argument heard. The record was closed and the matter submitted on May 1, 2012.

¹ The surnames of Claimant and her family have been omitted to protect their privacy.

ISSUE

Should the Service Agency be required to pay for Claimant's attendance at the 2012 Camp Ramah Ezra summer program?

FACTUAL FINDINGS

1. Claimant is a 22-year-old conserved female. Her parents are co-conservators. She receives services from the Service Agency pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code section 4500, et seq.² Claimant has diagnoses of mild mental retardation, autism, and hydrocephalus. She also has a diagnosis of bi-polar disorder.

2. On December 14, 2011, the Service Agency issued Claimant a Notice of Proposed Action (NOPA) denying funding for the 2012 Camp Ramah's Ezra program, pursuant to section 4648.5, subdivisions (a)(1) and (2).

3. On March 9, 2012, Claimant filed a fair hearing request and appealed the decision.

4. Camp Ramah Ezra's program (Ezra program), in Ojai California, is a seven-week residential summer camp, from June 21, 2012 to August 15, 2012, for persons ages 18 to 22, with learning, emotional, or developmental disabilities. The Ezra program is described as a "vocational training program." It is one of the programs that Camp Ramah offers, so participants of the Ezra program interact with non-disabled campers. Claimant has attended Camp Ramah since at least 2007, and given her age of 22, 2012 is the last year that she will be able to attend the Ezra program. Participants of the Ezra

² All statutory references are to the Welfare and Institutions Code, unless otherwise noted.

program live alongside 1400 staff and campers in communal, independent living quarters with peers under adult supervision. The Ezra program helps attendees with personal development and independent living skills. Participants improve functioning through vocational skills, independent living abilities, self-image, social functioning, and Jewish community skills. The Ezra program is designed to increase personal responsibility, both in terms of following through on tasks and in regards to social interaction.

5. According to Claimant's most recent Individual Program Plan (IPP), dated December 8, 2011, the Service Agency recognizes that the Ezra program is a "familiar, structured, and supportive environment that promotes self-confidence and emotional stability." It also states, "Service Coordinator has requested WRC funding per parents' request for the full cost for Summer [sic] 2012."

The IPP documents as a desired outcome that Claimant "will have social recreation opportunities that will encourage her interaction with peers with and without special needs." The second desired outcome is that Claimant "will continue developing the skills necessary to maintain friendships and participate in typical social recreational activities."

6. The Service Agency is providing funding for other services for Claimant, including the Tierra Del Sol Nexus day program (Nexus program), Monday through Friday, for approximately five to six hours per day. The year 2012 is the first year that Claimant has participated in the Nexus program, considered to be a community integration program. From January to June 2012, the Nexus program took place at the Los Angeles Valley College, and Claimant took classes at the college four days per week. The Nexus program also provides opportunity for volunteer internships of Claimant's

choice, and Claimant was able to volunteer for a supervised teaching job one day per week.

7. The Service Agency's position is that it is prohibited under the Lanterman Act from funding the Ezra program. While the Service Agency acknowledges that the Ezra program provides Claimant with some therapeutic benefit, its position is that the service is a camp and that Claimant does not qualify for an exemption under the law. Still, the Service Agency had offered Claimant partial funding of the Ezra program. At hearing, no further evidence was offered as to the amount of partial funding offered.

It is also the Service Agency's position that the Ezra program is not the most cost-effective option since it believes that the Nexus program addresses many of the same general goals that are a part of Claimant's IPP, but costs much less than the Ezra program, i.e. \$3,874 for two months, as opposed to \$8,330 for approximately two months. The Service Agency's position is that Nexus program, although not residential and seven days per week, has the same general outcome goals involving vocational skills and independent living skills as the Ezra program.

8. Mother explained that the Ezra program provides Claimant with structure and stability. At the Ezra program, Claimant is taught independent living skills and is given a job at the camp. Claimant has held various jobs in the past several years including providing childcare for children of other staff, working in the Ezra store, serving as the sports director of basketball, and writing a blog for the camp. Mother reports that the Ezra program serves as a great opportunity for Claimant to interact with peers who are not developmentally disabled and, therefore, helps Claimant with her issues of impulsivity, safety, boundaries, and distractibility. Parents feel that the Ezra program has played a significant role in Claimant's personal and social development and

that it has a proven track record of success for Claimant. Moreover, they fear that without the Ezra program, Claimant may regress to the point of needing hospitalization.

9. Claimant's parents have been very satisfied with the Nexus program from January to June 2012. However, in their view, the Nexus program does not teach Claimant independent living skills. Moreover, the curriculum for the Nexus program for the summer is somewhat unknown at this time due to the cancellation of many classes at the Los Angeles Valley College. Parents received information that all but four classes have been cancelled for the summer. Although the Nexus program will continue for the summer months; the curriculum is unknown at this time. If Claimant does not utilize the services of the Nexus program for the summer, she will resume attending the program towards the end of August 2012.

10. Claimant's parents presented a letter dated April 24, 2012, by Susan R. Young, M.D., a board certified child, adolescent, and adult psychiatrist. Dr. Young has been on the clinical faculty and taught at UCLA in the Department of Psychiatry and Child Psychiatry and practiced psychiatry in Los Angeles for more than 25 years. Claimant has been seen by Dr. Young since 1995. Dr. Young wrote, "After the first year of treatment, which included multiple hospitalizations, and consultation with other UCLA faculty child psychiatrists, it appeared [Claimant] might be manageable only in a long-term placement." Between 1995 and 2004, Claimant was hospitalized at the UCLA Neuropsychiatry Institute five times, for durations of 5 to 30 days, for "serious psychotic processing and as a danger to self." Claimant has been treated weekly for 16 years, and bi-weekly thereafter "for medication adjustments, and behavioral interventions to help her maintain appropriate behaviors at school, with peer relationships and at home." Dr. Young reports that Claimant "suffered from repeated episodes of psychotic processing which followed instability of structure and unstable supervision, coinciding with

disruptions in school programs.” Dr. Young found that Claimant’s “illness with destabilizations has a poor prognosis with institutionalization as a potential outcome, unless very careful and appropriate structure and consistency are primary in her medical program.”

In her letter, Dr. Young acknowledged the Nexus program has benefitted Claimant greatly by providing her structure. She opined, however, that the “Ezra program is essential in preventing interruption of [Claimant’s] stability with risk for subsequent psychiatric hospitalization, and as such is critically important in her therapeutic program.” She opined that the Ezra program “provides the consistency and structure needed for [Claimant’s] mental stability.” Dr. Young also reports that, when Claimant returns from the Ezra program, she is “calmer, more stable and independent, having confidence to resume school and the ability to be socially appropriate.” Dr. Young “strongly” recommends the Ezra program and feels that “Without the full-time eight-week [Ezra program], [Claimant’s] mental balance and functionality is put at risk for destabilization.”

11. The Service Agency also funds a personal assistant for Claimant for 84 hours per month, as well as 21 hours per month of respite.

12. The Ezra program for the summer of 2012 costs \$8,330. During the time that Claimant would attend the Ezra program, however, the Nexus program, personal assistant, and respite services funded by the Service Agency for the Claimant would not be needed, since Claimant would not be physically available to receive such services and parents would automatically receive respite while Claimant is attending the camp. According to the Service Agency, the overall difference between the cost of the Ezra program and the three services for two months is approximately \$1867.

LEGAL CONCLUSIONS

1. The purpose of the Lanterman Act is primarily twofold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community (§§ 4501, 4509 and 4685), and to enable them to approximate the pattern of everyday living of non-disabled persons of the same age and to lead more independent and productive lives in the community. (§§ 4501 and 4750-4751.) Accordingly, persons with developmental disabilities have certain statutory rights, including the right to treatment and habilitation services and the right to services and supports based upon individual needs and preferences. (§§ 4502, 4512, 4620 and 4646-4648.) Consumers also have the right to a "fair hearing" to determine the rights and obligations of the parties in the event of a dispute. (§§ 4700-4716.)

2. The Lanterman Act gives regional centers, such as Service Agency, a critical role in the coordination and delivery of services and supports for persons with disabilities. (§ 4620 et seq.) Thus, regional centers are responsible for developing and implementing individual program plans, for taking into account consumer needs and preferences, and for ensuring service cost-effectiveness. (§§ 4646, 4646.5, 4647, and 4648.)

3. Section 4648.5 provides:

(a) Notwithstanding any other provision of law or regulations to the contrary, effective July 1, 2009, a regional centers' [sic] authority to purchase the following services shall be suspended pending implementation of the Individual Choice Budget and certification by the Director of Developmental Services that the Individual Choice Budget has been implemented and will result in state budget savings sufficient to offset the costs of providing the following services:

(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.
- (4) Nonmedical therapies, including, but not limited to, specialized recreation, art, dance, and music.
- (b) For regional center consumers receiving services described in subdivision (a) as part of their individual program plan (IPP) or individualized family service plan (IFSP), the prohibition in subdivision (a) shall take effect on August 1, 2009.
- (c) 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.

4. The Ezra program is a camping service that is subject to suspension under section 4648.5, subdivision (a)(1). It, therefore, cannot be funded by the Service Agency unless there is an available exemption under section 4648.5, subdivision (c). Claimant has established that an exemption is appropriate. The Ezra program is a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of Claimant's developmental disability, by reason of Factual Findings 1 through 12 and Legal Conclusions 1 through 3. Although the Service Agency's position is that Claimant does not qualify for an exemption, it did not offer evidence to support this position. Nor did it offer any evidence contrary to Dr. Young's opinion regarding the primary or critical

need of the Ezra program for Claimant. The evidence established that the Ezra program teaches Claimant independent living, vocational, and socialization skills and provides Claimant with structure, support, and supervision, in a setting that allows her to maintain her mental and behavioral stability. While the Nexus program has been valuable in helping Claimant meet some of these same goals from January to June 2012, its future is somewhat unknown at this time. The Nexus program is not, therefore, a cost-effective alternative to the Ezra program.

ORDER

Claimant Amy E.'s appeal is granted. The Westside Regional Center shall fund the summer 2012 Camp Ramah Ezra program for Claimant.

DATED: May 13, 2012

JANKHANA DESAI

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days.