

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

NATALIE C.,

Claimant,

v.

SAN GABRIEL POMONA REGIONAL
CENTER,

Service Agency.

OAH Case No. 2012051232

DECISION

Administrative Law Judge Jankhana Desai, Office of Administrative Hearings, State of California, heard this matter on September 25, 2012, in Pomona, California.

Jack H. Anthony, Attorney at Law, represented Natalie C.¹ (Claimant). Julie A. Ocheltree, Attorney at Law, represented the San Gabriel Pomona Regional Center (SGPRC or Service Agency).

Oral and documentary evidence was received on September 25, 2012. The record was held open to allow Claimant to submit any additional evidence in response to Exhibit 10, by October 15, 2012, and to all the parties to submit closing arguments by October 22, 2012. Both parties submitted closing briefs. Claimant's closing brief was

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

marked as Exhibit 11, and the Service Agency's closing brief was marked as Exhibit S. On October 23, 2012, the record closed and the matter was submitted for decision.

ISSUE

May the Service Agency terminate funding of Claimant's speech therapy?

FACTUAL FINDINGS

1. Claimant is a 8-year-old female who 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 is eligible for regional center services due to a diagnosis of autism. She lives with her father, sister, and family friend, Peter T.

2. Claimant attends grade school and receives special education services from the school district. An individualized education program (IEP) plan dated May 21, 2012, reports that Claimant receives 90 minutes of language and speech services per week. At school, Claimant utilizes Picture Exchange Communication System (PECS) and the IPAD to assist her with communication. Although the IEP does include goals regarding verbal approximations, the focus of communication is through PECS and the IPAD. PECS is a series of pictures in a book and Claimant can use the pictures to communicate. With the IPAD, which is what Claimant predominantly uses at school, Claimant uses icons and pictures. The IPAD also has a voice feature.

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

3. In addition, the Service Agency funds speech therapy for Claimant.³ She has been receiving services from Stacey Belche (Belche), a licensed speech pathologist, since July 2010.⁴ Belche has been seeing Claimant for hourly sessions nine times per month. Belche's speech therapy goals for Claimant are different from the goals in her IEP. Belche includes a strong emphasis on verbal communication and has created goals that would encourage Claimant to increase her vocabulary and her intelligibility for word usage. This is in contrast with the augmentative communication skills taught through Claimant's school district. Belche explained that augmentative communication involves the use of communication devices such as PECS or the IPAD as opposed to verbal communication. None of Belche's goals include the use of augmentative communication. She is focusing on verbal communication, which allows Claimant to better integrate into the community. Belche testified at hearing and opined that she recommends that Claimant continue with her speech therapy through the Service Agency, in addition to the speech therapy services she receives at school. Belche's services do not duplicate the school's services. Belche explained that Claimant has made significant improvement as a result of the speech therapy she has received funded through the Service Agency. Specifically, Claimant is becoming a "total communicator," using manual modes of communication as well as verbal speech. According to a progress report by Belche dated June 30, 2012, Claimant has met all of her verbal speech goals.

³ The Service Agency is currently funding speech therapy services for Claimant based on a decision by former Administrative Law Judge (ALJ) Sophie Agopian in May 2009.

⁴ Belche's company is named Neurotransitions.

4. As a result of Belche's speech therapy, Claimant is more verbal at home. She is using more verbal communication with Peter T. for the last 18 months, and in particular, the last eight to 10 months. Claimant's father, Michael J. (Father), also confirmed that Claimant has made great progress with the speech therapy services funded by the Service Agency. He explained that they utilize all forms of communication, PECS, the IPAD, and verbal communication at home. He also explained that Claimant now uses two to three word sentences and he attributes her progress to Belche's speech therapy. At hearing, Father testified that he recently asked Claimant to come into the backyard and she responded by saying, "wait a minute."

5. The Service Agency agrees that Claimant would benefit from speech therapy. Deborah Langenbacher, Ph.D., a staff clinical psychologist that works for the Service Agency, testified on its behalf. Dr. Langenbacher opined that language skills are critical for an autistic child to achieve independence. The Service Agency's position, however, is that it does not fund speech therapy for consumers after the age of three and that speech therapy services should be provided by the school district since it is an educational service. In this case, Claimant is already receiving speech therapy services from the school district. Salvador Gonzales (Gonzales), Manager of Family Services for the Service Agency, testified at hearing. Gonzales explained that the Service Agency's decision to terminate speech therapy funding for Claimant was independent of her needs and, instead, was based on its policy that speech therapy is not to be provided by the Service Agency to children over three.

6. Claimant's most recent Individual Program Plan (IPP) dated July 2010, indicates as a desired outcome, "Father would like Natalie to improve her communication skills to better communicate her needs, wants, and emotions." Claimant was receiving speech therapy services at that time through a different vendor. In July 2010, the vendor changed to Neurotransitions. The Service Agency argued that the

decision previously rendered by ALJ Agopian to not allow the Service Agency to terminate funding of speech therapy to Claimant was before the passing of Assembly Bill 9 (AB 9) in 2009. AB 9 suspended funding of educational services absent an exemption. ALJ Agopian's decision does not serve as precedent in this case and this decision is not bound by her decision.

7. Claimant also receives services from Autism Spectrum Therapies (AST). AST provides behavioral therapy services to Claimant and its services are not duplicative to those provided by Belche.

8. On May 15, 2012, the Service Agency issued Claimant a Notice of Proposed Action (NOPA) proposing to terminate funding for speech therapy for Claimant through Neurotransitions.

9. Claimant timely filed a fair hearing request and this hearing ensued.

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 determination of which services and supports are necessary for a consumer is made through the IPP process. The IPP must be developed through a process of individual needs determination, which may include the consumer, the

consumer's parents, a legal guardian or conservator, or authorized representative. The consumer and the family must have the opportunity to actively participate in the development of the plan. (§ 4646, subd. (b).) The IPP must include a statement of the consumer's goals and objectives based on the consumer's needs and preferences or, when appropriate, the needs and preferences of the consumer's family. (§ 4646, subd. (a).) The development of the IPP must include consideration of a range of service options proposed by the IPP participants, the effectiveness of each option in meeting the goals stated in the IPP, the cost-effectiveness of each option, and "generic services and supports when appropriate." (§ 4512, subd. (b); § 4646.4, subd. (a).)

3. Section 4512, subdivision (b), defines the services and supports that may be funded, and sets forth the process through which they are identified, namely, the IPP process, a collaborative process involving consumers and service agency representatives. The statute defines services and supports for persons with developmental disabilities 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." Services and supports can include speech and language therapy. (Id.)

4. The Service Agency seeks to terminate funding of speech therapy services for Claimant because such funding is against their internal policy since Claimant is above the age of three, and because speech therapy is an educational service under section 4648.5, subdivision (a), and it can no longer be funded absent an exemption.

5. 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.

6. The Service Agency's internal standards cannot and do not supplant the Lanterman Act. (§ 4512, subd. (b).) Regional Centers cannot use their internal policies and standards to limit the amount or kind of services under the Lanterman Act.

7. The Service Agency correctly argues that the speech therapy services are “educational services for children three to 17” within the meaning of section 4648.5, subdivision (a)(3). However, this does not end the analysis. The evidence established that Belche’s speech therapy services provided by the Service Agency qualify for an exemption as they are the primary or critical means for ameliorating the cognitive and psychosocial effects of Claimant’s developmental disability. Her communication deficits remain significant, and speech and language services have made an impact in her home life. Because Claimant has made significant progress receiving speech and language therapy services from school and non-school sources, it is reasonable to conclude, absent contrary clinical evidence, that this level of service is critical for her continued progress. The services provided by Belche assist Claimant to communicate at home, become more independent, and integrate into the community. They are an integral part of the speech and language services, and, therefore, an exemption exists. Moreover, the evidence established that the school district is currently not offering the type of speech services Claimant receives from the Service Agency; if she were, a different conclusion might be reached.

8. The Service Agency argues that speech and language services are the primary responsibility of the school district, and that the Legislature has removed its ability to supplement educational services. However, despite the funding limitations, section 4648.5 contains exemption language for appropriate circumstances, and Claimant’s case warrants an exemption.

ORDER

Claimant Natalie C.’s appeal is granted and the Service Agency shall continue funding speech therapy services for Claimant.

DATED: November 6, 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.