

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CAROLINE B.,

Claimant,

vs.

EASTERN LOS ANGELES REGIONAL
CENTER,

Service Agency.

OAH Case No. 2012080801

DECISION

Chris Ruiz, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter at the Eastern Los Angeles Regional Center, in Whittier, on November 1, 2012.

Ruth B., Claimant's mother (Mother), represented Claimant.¹

Antonio Flores, Supervisor, represented the Eastern Los Angeles Regional Center (ELARC, service agency, or regional center.)

Oral and documentary evidence was received and argument made. The record was closed and the case was submitted for decision on November 1, 2012.

ISSUE

The parties stipulated that the following issue is to be decided by the ALJ:

¹ Claimant and her family are referred to by their initials or family titles to protect their confidentiality.

Shall the service agency be ordered to provide reimbursement to Claimant for the cost of speech therapy paid for by Mother in August 2012.

FACTUAL FINDINGS

1. Claimant is an eight year-old girl who is a consumer of the service agency by reason of her diagnosis of mental retardation/fifth category.

2. Claimant filed a fair hearing request on August 2, 2012.

3. Claimant receives all her services (e.g. speech therapy)(ST) through her school district, with the exception of 24 hours per month which is funded by ELARC.

4. In the past, ELARC has funded ST for Claimant for a five week period in the summer when the school district would not provide services. However, with the new law recently passed, the regional center now insist on Claimant first requesting all services from the school district before it funds services as the "payor of last resort."

5. While the written document was not in evidence, Mother testified that there was apparently a decision from the Office of Administrative Hearing regarding funding for this same issue last year (i.e. the summer of 2011). At that time, funding was ordered, but Claimant was instructed that she needed to seek all further services from the school district first and follow their appeal process if that service was denied.

6. Thereafter, Mother waited until April 2012 to seek ST for the five weeks at issue. Her request was denied and she went through the appeal process. Ultimately a decision was rendered which concluded that Claimant needed a break in receiving ST and that she would not regress in five weeks.

7. Claimant only offered receipts of \$400.00 in this case. Because she did not notify ELARC five days before the hearing that she intended to call witness or offer exhibits, she was unable to establish the need for ST during the five weeks at issue, or that the regional center should reimburse her for the money she spent. Thus, the only

remaining evidence was that the five weeks of ST at issue was not necessary or would not cause regression based on the ruling in the special education fair hearing.

LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code § 4500 et seq.)² A state level fair hearing to determine the rights and obligations of the parties, if any, is referred to as an appeal of the service agency's decision. Claimant properly and timely requested a fair hearing and therefore jurisdiction for this case was established. (Factual Findings 1-2.)

2. When a claimant seeks to establish the propriety of a service not previously agreed to by the service agency, the burden is on that appealing claimant to demonstrate the service agency's decision is incorrect. Where the service agency seeks to discontinue a service it has previously funded, the service agency has the burden to demonstrate that its decision is correct. In this case, Claimant has the burden of establishing that ELARC should reimburse Claimant for services because she had been instructed to utilize the school district first. While she may not have understood the complete process, waiting until April 2012 to request a service in August 2012, and knowing that request would likely be turned down, then requiring a protracted appeal process were not reasonable.

3. Section 4501 requires the state, through the regional centers, to provide an array of services and supports which is sufficiently complete to meet the needs and choices of each person with developmental disabilities. These are services and supports that will allow them, "regardless of age or degree of disability, and at each stage of life" to integrate "into the mainstream life of the community" and to "approximate the pattern of everyday living available to people without disabilities of the same age."

² All further statutory references are to the Welfare and Institutions Code.

Persons with developmental disabilities have the right to treatment and habilitation services and supports which foster the individual's developmental potential and are "directed toward the achievement of the most independent, productive and normal lives possible." The regional centers will work with consumers and their families to secure "those services and supports that maximize opportunities and choices for living, working, learning and recreating in the community." (§ 4502.)

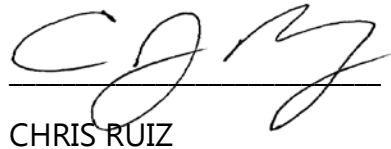
4 The Lanterman Act does not specifically authorize retroactive reimbursement of services costs to families in the fair hearing context. The statutes detailing the IPP process suggest that reimbursement is generally not available, particularly where the development of the IPP is supposed to be a collaborative process between the parties and the process necessarily requires prior consideration and approval of any service or support provided to an individual client. Nevertheless, the absence of statutory authority is not necessarily dispositive of the issue of reimbursement because general principles of equity may require reimbursement in particular cases in order to fulfill the purposes and intent of the Lanterman Act. (See *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.) In this case, SCLARC responded appropriately given Claimant's change of residence and given that he was in foster care.

ORDER

Claimant Caroline B.'s appeal of the Eastern Los Angeles Regional Center's decision to deny reimbursement for speech therapy is denied.

IT IS SO ORDERED.

DATED: November 9, 2012.



CHRIS RUIZ

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.