

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

A.Y.,

Claimant,

vs.

WESTSIDE REGIONAL CENTER,

Service Agency.

OAH No. 2012090622

DECISION

Howard W. Cohen, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on November 1, 2012, in Culver City.

A.Y.¹ (claimant) was not present; he was represented by his mother, S.Y., and his father, J.Y.

Lisa Basiri, Fair Hearing Coordinator, represented Westside Regional Center (Service Agency or WRC).

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

ISSUE

Whether the Service Agency must provide funding for an autism service dog for claimant, through Pawsitive Service Dog Solutions.

¹ Initials and family titles are used to protect the privacy of claimant and her family.

EVIDENCE RELIED UPON

Documents: Service Agency's exhibits 1-15; claimant's exhibits A-M.

Testimony: Soryl Markowitz, L.C.S.W.; S.Y., J.Y.

FACTUAL FINDINGS

1. Claimant is a six-year-old boy who is a consumer of WRC based on his qualifying diagnoses of autism and seizure disorder; he has also been diagnosed with mitochondrial disorder and apraxia. Claimant lives with his parents, his brother, and his sister. The three siblings are triplets; they have all been diagnosed with autism, and are all WRC consumers.

2. Claimant attends Smart Start, a non-public school for six hours per day, five days per week. The school district provides claimant with two hours per week of speech therapy (ST) and two hours per week of occupational therapy (OT). His most recent progress report from Smart Start, dated June 25, 2012, states that claimant eats only pureed foods, mouths objects, has no safety awareness, is pre-verbal, has limited communication skills, and exhibits aggressive behaviors such as biting and hitting throughout the day. Claimant's parents want him to be able next year to attend Westside Innovative School House (WISH) Charter School, an elementary school that his siblings attend; WISH has special education teachers and therapists on staff.

3. Claimant receives Service Agency funding for 60 hours per month of behavior intervention services and 28 hours per month of behavioral respite (personal assistance); he has been receiving behavioral intervention services since at least 2009. He also receives 283 hours per month of In-Home Support Services/Protective Supervision from the Los Angeles County Department of Social Services.

4. Claimant's most recent Individual Program Plan (IPP) prepared after a meeting on January 25, 2012, reflects that claimant requires assistance in all areas of self-help, that he must be monitored in order to ensure his safety at all times, that he has no safety awareness, and that he has only started to communicate verbally to some degree.

He is prompt-dependent.

5. On July 9, 2012, claimant's parents requested Service Agency funding for an autism service dog for claimant through Pawsitive Service Dog Solutions. By a notice of proposed action (NOPA) and letter dated August 30, 2012, the Service Agency notified claimant's parents that it would not fund a service dog. The NOPA states that the denial was based on WRC Service Standards and on Welfare and Institutions Code sections 4648, subdivision (a)(15), and 4648.5.² (Ex. 2.)

6. On September 12, 2012, claimant submitted to WRC a Fair Hearing Request, appealing the denial of funding for a service dog for claimant.

7. By letter dated October 16, 2012, after an informal meeting with claimant's parents, Lisa Basiri, WRC Fair Hearing Coordinator, wrote to claimant's parents upholding the decision to deny funding, on the grounds stated in the NOPA. She wrote that she had reviewed the studies of the use of autism service dogs that claimant's parents had provided, and found that they did not incorporate standard research design or collect meaningful data. (Ex. 3.)

8. Soryl Markowitz, L.C.S.W., is WRC's autism and behavior specialist, overseeing all programs providing behavioral support for WRC's consumers. She is on WRC's eligibility committee and its purchase-of-services committee, and serves as the Service Agency's liaison to its clinic at UCLA. She is on a State of California advisory committee addressing best practices for the delivery of services to people diagnosed with autism. She testified at hearing that she reviewed claimant's behavior intervention reports and is familiar with the services he receives. Claimant continues to require supervision; he fails to respond to requests to stop, challenging boundaries and trying to ride his scooter into the street. The overarching goal of behavior intervention services is to assist claimant in developing skills, and to provide claimant's family with the skills necessary to manage

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

claimant's behavior and encourage growth and participation in family life. Though time-limited, in claimant's case these services are expected to continue for some time.

9. Smart Start is both claimant's pre-school and the provider of claimant's in-home services. Claimant receives over 40 hours of services per week, comprising 30 hours at school and 10 to 12 hours of behavior intervention at home. Ms. Markowitz testified that this amount falls within the best practices guidelines for children with autism. Service dogs are not recognized under best practices guidelines as therapeutic interventions. They may assist with some safety issues and encourage social interaction. There has been no consistent replication of the findings in studies of the efficacy of autism service dogs, and there is no body of evidence-based information to support their use. The studies are largely qualitative, not quantitative, and their conclusions about the usefulness of service dogs are highly qualified. Several of the studies refer to the use of a tether, connecting the child to the dog; Ms. Markowitz has concerns about the safety and legality of the use of tethers. Ms. Markowitz is familiar with WISH Charter School; she testified that the school implements only very minimal behavior plans, and that the school is inappropriate for children, such as claimant, who presents significant and intensive behavioral and developmental challenges.

10. Ms. Markowitz testified that the primary and critical services for claimant are his school program and the behavior intervention services and behavioral respite services funded by the Service Agency. An autism service dog would not be a critical means, but would be, rather, an enhancement. The literature is not substantial enough to demonstrate that it should be a recognized intervention.

11. One of claimant's doctors, Jerrold J. Kartzinel, M.D., prescribed for claimant a "Therapy Dog/Service dog as needed." (Ex. B.) Dr. Kartzinel wrote, in a letter dated October 22, 2012, that claimant is exposed to significant safety risks beyond those faced by most children with autism, and that a service dog could help find claimant if he wanders, and would help keep him in the family on family outings in the community. Another of claimant's doctors, Ricki G. Robinson, M.D., M.P.H., a clinical professor of pediatrics at

USC's Keck School of Medicine, wrote in a letter dated October 22, 2012, that sensory processing issues affect claimant's cognitive functioning, and that a dog could be trained to give claimant appropriate input. Both Dr. Kartzinel and Dr. Robinson wrote that a service dog would be a critical means of ameliorating the psychosocial effects of claimant's developmental disability.

12. Claimant's parents testified that claimant climbs the fence at the family house and wanders out into the street. He is fascinated by water, so the neighbors' swimming pools pose a challenge to his safety. He eats non-food items, is a low verbal communicator, engages in self-stimulation and hand-flapping, and grabs, bites, and pinches when he is frustrated. This is his last year at Smart Start. Claimant's parents would like him to attend WISH Charter School, but are worried about claimant's safety on an open campus and his ability to participate in school activities with typically-developing peers. They want to integrate claimant successfully into the family and the community. They cannot take all three children out at once, because of claimant's behaviors. They believe, based on various studies, that a service dog could alert them when claimant begins to wander, would provide claimant with tactile input to help him stay calm, and would divert claimant from unsafe behaviors, thereby allowing them to do more activities together as a family. They want to give claimant the best chance possible for an independent life. It would require 10-14 months to train the dog, commencing at Pawsitive Solutions and then finishing at the family home; the cost would be \$9,000.

13. There was no showing that the use of a service dog is necessary for claimant to remain at home.

LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (§ 4500 et seq.) An administrative "fair hearing" to determine the rights and obligations of the parties is available under the Lanterman Act. (§§ 4700-4716.) Claimant requested a fair hearing to appeal the Service Agency's denial of funding for a service dog for claimant. (Factual Findings 5, 6.)

2. The party asserting a claim generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) In this case, claimant bears the burden of proving, by a preponderance of the evidence, that he is entitled to funding for a service dog. (Evid. Code, § 115.)

3. The Lanterman Act is a comprehensive statutory scheme to provide “[a]n array of services and supports . . . which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community.” (§ 4501.) The services and supports should “enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age.” (*Id.*)

4. The services and supports to be provided to a consumer are determined in the IPP process on the basis of the needs and preferences of the consumer and a 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, and the cost-effectiveness of each option. (§ 4512, subd. (b).)

5. Section 4648, subdivision (a)(15), prohibits regional centers from purchasing “experimental treatments, therapeutic services, or devices that have not been clinically determined or scientifically proven to be effective or safe or for which risks and complications are unknown.”

6. Regional centers may not fund non-medical therapies, social recreation activities, or educational services. (§ 4648.5, subd. (a).) An exemption may be granted “in extraordinary circumstances” if the regional center determines that the service “is a primary or critical means for alleviating 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.” (§ 4648.5, subd. (c).)

7. Claimant's parents did not establish by a preponderance of the evidence that claimant is entitled to Service Agency funding for a service dog. (Factual Findings 1-13.) The efficacy of autism service dogs has not been conclusively established, according to the studies in the record. Thus, to the extent the service dog would provide therapeutic services to claimant, such as calming him, section 4648 precludes regional center funding. Such funding is similarly precluded under section 4648.5, subdivision (a). And claimant does not fall within the exemption to section 4648.5, subdivision (a); although a service dog might prove to ameliorate some safety issues, the services currently funded by the Service Agency appear to be the primary and critical means for addressing the effects of claimant's disabilities, and there was no evidence that claimant will not remain in his home absent the funding of a service dog.

ORDER

Claimant's appeal is denied. WRC is not required to provide funding for a service dog for claimant.

DATED: December 6, 2012

A handwritten signature in black ink, appearing to read "Howard W. Cohen", is written over a horizontal line.

HOWARD W. COHEN

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.