

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

**In the Matter of:**

**CLAIMANT,**

**vs.**

**EASTERN LOS ANGELES**

**REGIONAL CENTER,**

**Service Agency.**

**OAH Nos. 2014041099 and 2014050278**

**DECISION**

These consolidated matters were heard by Laurie R. Pearlman, Administrative Law Judge with the Office of Administrative Hearings, on May 21, 2014, in Alhambra, California. Claimant was present and was represented by his mother.<sup>1</sup> Eastern Los Angeles Regional Center (Service Agency or ELARC) was represented by Elizabeth Ornelas.

Oral and documentary evidence was received, and argument was heard. The record was closed, and the matter was submitted for decision on May 21, 2014.

**ISSUES**

The issues to be decided are as follows:

1. Should ELARC be permitted to reduce Claimant's social skills training at Danny's Farm Extended Day Program (Danny's Farm) during the

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<sup>1</sup> The name of Claimant and his mother are omitted throughout this Decision, and family titles are used, to protect their privacy.

school year from four days per week at three hours per day, to three days per week at three hours per day?

2. Should ELARC be required to provide funding for Claimant to attend Danny's Farm for four days each week from 9 a.m. until 3 p.m. for three weeks during the summer, while he is out of school?

## FACTUAL FINDINGS

1. Claimant is a seven-year-old (born 4/09/2007) male client of the Service Agency who qualifies for regional center services under a diagnosis of Severe Mental Retardation. He has also been diagnosed with Congenital Hydrocephalus, Hirschprung's Disease, Spastic Diplegia and Epilepsy. Claimant has a gastrostomy tube and is completely dependent on others for all activities of daily living. He is non-verbal and communicates using gestures, facial expressions, sounds, body movements and pictures on an iPad equipped with a communication application. He is able to understand simple phrases and to follow simple instructions. Claimant is non-ambulatory and uses a wheelchair and an adaptive stroller for mobility. He cannot move or guide the wheelchair independently or grasp small objects, but he is able to grasp large objects using both hands. Claimant requires constant adult supervision and guidance and is very reliant on prompting. He is a very calm and well-behaved child. Claimant attends school in the Pasadena Unified School District (District), which provides Claimant with speech therapy, occupational therapy and physical therapy. Claimant lives at home with his parents and ten-year-old brother.

2. Claimant's mother testified credibly at the hearing. Her son's April 24, 2013 Individualized Program Plan (IPP) stated that ELARC will fund four days per week of socialization services at Almansor Center's socialization program (Almansor), in accordance with its Purchase of Service Guidelines. (Exhibit F,

pages 6-7.) From November 2009, when he was age two until he turned seven in April 2014, Claimant attended Almansor, which focused on social, communication and independence skills. ELARC provided a 1:1 aide for Claimant at Almansor. Claimant attended Almansor four days per week for three hours per day. He benefitted from the after-school enrichment and day care offered by Almansor, but he aged out of that program in April 2014. Beginning in November 2013, Claimant's mother attempted to locate another socialization program for Claimant to attend once he had aged out of the program at Almansor. She contacted ELARC and each of the generic resources in the community, including the City of South Pasadena and Ability First. Claimant's mother informed ELARC that none of the five programs were able to accept Claimant, either because they could not integrate a disabled child into their program, did not have ramps, could not accommodate a child who uses a wheelchair, or because a 1:1 aide could not be provided. (Exhibit E.) Claimant's mother established that she exhausted all generic options for socialization in the community.

3. Claimant's mother contacted Danny's Farm, which has an intensive, highly individualized program for children with autism and other exceptional needs. It was the only program that agreed to work with her son. The goal of Danny's Farm is to help children to grow socially, physically and cognitively. According to Max Preminger, Program Director of Danny's Farm, they would work to support Claimant's growth in a multitude of areas including increasing his communication skills by teaching Claimant how to use his communication device to express wants and needs and to give him the ability to label; improving his spatial awareness; increasing his awareness of health and safety issues; and improving Claimant's limited mobility and fine motor skills. Danny's Farm would work to maximize his use of a walker and to strengthen his legs. (Exhibit C.) Claimant is motivated to use his walker at Danny's Farm because he particularly

enjoys walking over to play with the “bunnies” and other animals. Preminger recommended that Claimant attend Danny’s Farm five days per week year-round, for three hours daily during the school year and for six hours daily during the summer. However, Claimant is seeking ELARC funding to attend Danny’s Farm for four days per week year-round, as he goes to medical appointments and aquatic therapy on Wednesdays.

4. At the fair hearing, the Danny’s Farm Program Design was presented (Exhibit 7 and Exhibit C) and set forth details including:

**Service Overview**

Danny’s Farm offers a safe, structured, nurturing environment for children with autism spectrum disorders and other related developmental disabilities.<sup>2</sup> Our Specialty Autism Program is conducted during non-school hours, in the afternoons, on holidays, and during summer months. Our curriculum is specifically designed to serve children who may exhibit self-abusive behavior, excessively friendly advances toward others, or other behaviors that significantly affect their ability to be successful in traditional programs. . . . Danny’s Farm is

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<sup>2</sup> The reference to “autism spectrum disorders and other related developmental disabilities” is from Exhibit 7, which Ornelas stated is “outdated.” The updated description in Exhibit C states that Danny’s Farm is “designed as a unique experience created especially for individuals ages 5-17 with Autism and other exceptional needs...”

a unique setting for teaching and learning. Our one-of-a-kind facility includes activities such as, petting and caring for the farm animals . . . developmentally age-appropriate arts and crafts, simple cooking, music, nature walks, and general farm/animal education. All of the activities are presented for clients who exhibit behavior that require intervention beyond that expected of a generic childcare or recreational setting. Each activity is broken down into very small parts, presented in dynamic modalities, and a variety of social skills are woven into the curriculum. There is not an overload of sensory input, as to minimize distractions and all staff is specifically trained to work with autism related disorders. . . .

### **Outcomes**

Clients are expected to make gains in the following areas:

1. Making choices
2. Developing and nurturing friendships
3. Learn about the outdoors, nature and animals
4. Respecting others
5. Waiting and listening
6. Following directions
7. Spatial awareness (Listed again as number 12 on the list)
8. Greetings & conversation skills
9. Transitioning away from preferred activities
10. Topic maintenance
11. Self-regulation skills

5. The stated rate for Danny's Farm participation was \$30.17 per hour, with a minimum of three hours per day. (Exhibit 7.) The Service Agency did not provide evidence to establish that Danny's Farm is not a cost-effective program.

6. NLACRC proposed a reduction in Claimant's social skills training during the school year from four days per week at three hours per day, to three days per week at three hours per day. On March 18, 2014, Claimant's mother requested that ELARC provide funding for her son to attend Danny's Farm for four days per week for three hours daily during the school year, beginning on April 7, 2014. On April 8, 2014, Claimant's mother also requested that ELARC fund Claimant's attendance at Danny's Farm for full day services during the summer when his school is out of session.

7. On March 26, 2014, ELARC sent Claimant a Notice of Proposed Action (NOPA), stating that it would fund Claimant's attendance at Danny's Farm for three days per week, for three hours per day, but not for four days per week. On April 30, 2014, ELARC sent Claimant a second NOPA, stating that it would not fund Claimant to attend Danny's Farm for full-day services during the summer while school is out of session, as the Service Agency is prohibited from funding day camp services. Claimant's mother filed timely fair hearing requests on March 29, 2014 and May 3, 2014, and this consolidated hearing ensued. Aid Paid Pending was provided for Claimant's attendance at Danny's Farm four days weekly during the school year, pending this appeal.

8. Elizabeth Ornelas testified credibly at the hearing on behalf of the Service Agency. ELARC agrees that Claimant should have enrichment, but not at the frequency his mother has requested. ELARC is willing to provide funding for Danny's Farm so that Claimant can attend that program for three days per week for three hours per day during the school year and during the summer. The goal is for the program to facilitate progress, with an eventual fade-out. The frequency

of services approved by ELARC would provide Claimant with a reasonable opportunity to increase skills and make good progress and parallels the agency's standards for social skills services. The decrease in service hours at Danny's Farm was based on the extended duration of Claimant's participation in Almanson's socialization program (which was funded for four days per week) and the progress he has made there since November 2009. Ornelas suggested that Claimant should transition to socialization or day care services. Funding for day care services would be a parental responsibility. ELARC believes that a frequency of service of four days per week during the school year fulfills a day care need and that full-day participation during the summer is fulfilling a day camp need, neither of which can be funded by ELARC under its Purchase of Service Guidelines unless an exception is granted. Because ELARC has determined that Danny's Farm is not a primary service or a critical means for ameliorating the effects of Claimant's developmental disability, the Service Agency will not grant an exemption. Ornelas testified that Danny's Farm is not appropriate for Claimant, since it is designed for children with autism and he is not autistic. However, this assertion is not well-taken since Danny's Farm also serves children with "exceptional needs" (see footnote 2) and since ELARC has approved funding for Claimant to attend the program. It merely takes issue with the number of hours Claimant wishes to attend. According to Ornelas, the hours requested exceed a rate that is reasonable under agency standards for social skills services. Ornelas suggested that Claimant's parents should utilize natural/generic resources (the South Pasadena Parks and Recreation Department was suggested for day camp) or fund the additional hours or days sought at Danny's Farm with their own funds.<sup>3</sup> Ornelas stated that Claimant's April 24, 2013 IPP provided an exception

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<sup>3</sup> Ornelas stated that Claimant's parents could submit a hardship request

for him to attend Danny's Farm for summer 2013, but that exception would not necessarily continue for summer 2014. Generally, ELARC provides funding for 7.5 to 10 hours per month of socialization programs. They currently provide fund 30 hours per month of socialization for Claimant. The District provides occupational and physical therapy to address Claimant's communication and mobility deficits, so he does not need to obtain those services at Danny's Farm, which does not have personnel with the credentials or licensing to provide such therapy. ELARC suggested that further reduction and eventual fade-out of funding for Danny's Farm will need to be "looked at" in the future.

9. John Rodarte, M.D., submitted a letter in support of Claimant's appeal. Dr. Rodarte has been Claimant's pediatrician since birth. He opined that Claimant would "greatly benefit" from attending Danny's Farm for five days per week for three hours per day during the school year and for five days per week for six hours daily during the summer. He stated that at Danny's Farm, Claimant would be able to work on increased use of his walker, on use of his communication device, on strengthening his hands and on other self-help skills. This would increase his mobility, his ability to spontaneously communicate, and his ability to feed himself and it would help Claimant to develop a firmer grip for daily hand use. (Exhibit D.)

10. Carol Lyn Cruz, Claimant's teacher, also submitted a letter in support of Claimant's appeal. She states that Claimant is a very passive child who needs the type of active stimulation throughout the entire day that Danny's Farm

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for ELARC's consideration, if they do not have the financial means to fund additional hours at Danny's Farm. Claimant's Mother declined to do so, stating that her husband earns a good income and she opined that provision of Service Agency services is not based on financial need.



would provide. Their program would support his toilet training, transition him to drinking from a cup, and help him gain independence in communicating with his iPad, feeding himself and using his gait trainer. (Exhibit D.)

11. Gwendolyn Meier, a Speech-Language Pathologist who is the Director of the Hjelte-Phillips Speech and Language Center, submitted a letter in support of Claimant's appeal. She states that Claimant's participation for a full day at Danny's Farm will afford him the opportunity to interact with his peers, use his gait trainer, learn by observing and "continue to develop his communication aided by staff familiar with supporting communication development for nonverbal youth. The stimulation and motivation [Claimant] receives at Danny's Farm is critical to facilitating his cognitive and communicative development and supporting his participation and engagement..." (Exhibit D.)

## LEGAL CONCLUSIONS

1. Cause exists to grant Claimant's appeal of the Service Agency's reduction of Claimant's social skills training at Danny's Farm during the school year from four days per week at three hours per day, to three days per week at three hours per day. (Factual Findings 1 through 11.)

2. Cause exists to grant Claimant's appeal of the Service Agency's denial of funding for Claimant to attend Danny's Farm for four days each week from 9 a.m. until 3 p.m. for three weeks during the summer, while he is out of school. (Factual Findings 1 through 11.)

3. Where a change in services is sought, the party seeking the change has the burden of proving that a change in services is necessary. (See, Evid. Code, §§ 115 and 500.)

4. In proposing to reduce Claimant's previously-funded social skills training during the school year, ELARC bears the burden of proving by a

preponderance of the evidence that the change in services is necessary. The Service Agency has not met its burden of proof .

5. In proposing to have ELARC fund his attendance at Danny's Farm for four days each week from 9 a.m. until 3 p.m. for three weeks during the summer, while he is out of school, Claimant bears the burden of proving by a preponderance of the evidence that the new service is necessary to meet his needs. Claimant has met his burden of proof on that issue.

6. A service agency is required to secure services and supports that: meet the individual needs and preferences of consumers (Welf. & Inst. Code, §§ 4501 and 4646, subd. (a).); support their integration into the mainstream life of the community (Welf. & Inst. Code, §§ 4501 and 4646, subd. (a).); "foster the developmental potential of the person" (Welf. & Inst. Code, § 4502, subd. (a).); and "maximize opportunities and choices for living, working, learning and recreating in the community" (Welf. & Inst. Code, § 4640.7, subd. (a).).

7. A service agency "shall give highest preference to those services and supports . . . that allow all consumers to interact with persons without disabilities in positive, meaningful ways." (Welf. & Inst. Code, § 4648, subd. (a)(1).)

8. Pursuant to Welfare and Institutions Code section 4512, subdivision (b), the "services and supports" which may be provided to a consumer include "training, education, . . . behavior training and behavior modification programs, . . . [and] social skills training . . . ."

9. Welfare and Institutions Code section 4512, subdivision (b) provides, in part:

[T]he determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs

and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option.

10. Welfare and Institutions Code section 4646 provides, in part:

(a) It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

11. Welfare and Institutions Code section 4646.5 provides, in part:

(a) The planning process for the individual program plan described in Section 4646 shall include all of the following:

[¶] . . . [¶]

(2) A statement of goals, based on the needs, preferences, and life choices of the individual with developmental disabilities, and a statement of specific, time-limited objectives for implementing the person's goals and addressing his or her needs. These objectives shall be stated in

terms that allow measurement of progress or monitoring of service delivery. These goals and objectives should maximize opportunities for the consumer to develop relationships, be part of community life in the areas of community participation, housing, work, school, and leisure, increase control over his or her life, acquire increasingly positive roles in community life, and develop competencies to help accomplish these goals.

[¶] . . . [¶]

- (4) A schedule of the type and amount of services and supports to be purchased by the regional center or obtained from generic agencies or other resources in order to achieve the individual program plan goals and objectives, and identification of the provider or providers of service responsible for attaining each objective, including, but not limited to, vendors, contracted providers, generic service agencies, and natural supports. The plan shall specify the approximate scheduled start date for services and supports and shall contain timelines for actions necessary to begin services and supports, including generic services.

(Emphasis added.)

12. Welfare and Institutions Code section 4648, subdivision (a)(1), provides:

In order to achieve the stated objectives of a consumer's individual program plan, the regional center shall conduct activities including, but not limited to, all of the following:

- (a) Securing needed services and supports.

- (1) It is the intent of the Legislature that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and in exercising personal choices. The regional center shall secure services and supports that meet the needs of the consumer, as determined in the consumer's individual program plan, and within the context of the individual program plan, the planning team shall give highest preference to those services and supports which would allow minors with developmental disabilities to live with their families, adult persons with developmental disabilities to live as independently as possible in the community, and that allow all consumers to interact with persons without disabilities in positive, meaningful ways.

[¶] . . . [¶]

- (7) No service or support . . . shall be continued unless the consumer or, where appropriate, his or her parents . . . is satisfied and the regional center and the consumer or, when appropriate, the person's parents . . . agree that planned services and supports have been provided, and reasonable progress toward objectives have been made."

13. ELARC's Purchase of Service Guidelines are based upon Welfare and Institutions Code section 4648.5, subdivision (c.) Claimant is seeking funding for social skills/social recreational activities provided by Danny's Farm. Social recreational activities are opportunities which provide a means to develop and enhance personal enjoyment, social interaction, leisure and participation in family and group activities. The Service Agency's authority to purchase social recreational activities and camping services was suspended, effective July 1, 2009. However, an exemption permitting the purchase of social recreational and camping activities may be granted on an individual basis in extraordinary

circumstances if the regional center determines that the service is a primary or critical means to ameliorate the physical, cognitive or psychosocial effects of the consumer's developmental disability. If an exemption has been granted, ELARC may purchase cost-effective social recreational activities offered in Claimant's community if the activity is not available through generic resources and is cost-effective. ELARC provided such an exemption to fund Claimant's attendance at Danny's Farm in summer 2013, indicating that the Service Agency deemed these factors to have been met at that time. The Service Agency did not present evidence sufficient to establish that any of these factors are no longer present. A preponderance of the evidence established that Danny's Farm provides a primary or critical means to ameliorate the physical, cognitive and psychosocial effects of Claimant's developmental disability and that his mother was unable to locate any other social recreational activities offered through generic resources in the community. The Service Agency failed to present sufficient evidence to justify a reduction in days during the school year and Claimant established, by a preponderance of the evidence, that additional hours during the summer are necessary to meet his current needs. (Factual Findings 1-11.)

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## ORDERS

1. Eastern Los Angeles Regional Center's reduction of Claimant's social skills training at Danny's Farm during the school year from four days per week at three hours per day, to three days per week at three hours per day is overruled and Claimant's appeal is granted.

2. Eastern Los Angeles Regional Center's denial of funding for Claimant to attend Danny's Farm for four days each week from 9 a.m. until 3 p.m. for three weeks during the summer of 2014, while he is out of school, is overruled and Claimant's appeal is granted.

DATED: June 4, 2014

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LAURIE R. PEARLMAN

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.