

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

OAH No. 2014050603

Shawn S.,

Claimant,

vs.

SAN GABRIEL POMONA REGIONAL
CENTER,

Service Agency.

DECISION

Administrative Law Judge Deborah M. Gmeiner of the Office of Administrative Hearings heard this matter on June 16, 2014, in Pomona, California.

Shawn S. (Claimant) was represented by her mother, Jackie S. (mother).¹ Claimant attended the hearing.

Daniela Santana, Fair Hearing Manager, represented San Gabriel Pomona Regional Center (SGPRC or Service Agency).

¹ Claimant and her mother are identified by their first name and last initial to protect their privacy.

Oral and documentary evidence was received and the matter was submitted on for decision June 16, 2013.

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ISSUE

Must the Service Agency fund Club Aspire for Claimant?

FACTUAL FINDINGS

JURISDICTIONAL FACTS

1. Claimant is a 22 year-old woman who resides with her mother and older sister. Claimant's father is deceased. Claimant is eligible for services under the Lanterman Developmental Disabilities Services Act (Lanterman Act) (Welf. & Inst. Code, § 4500 et seq.) on the basis of mild intellectual disability.² Mother is Claimant's conservator.

2. On April 24, 2014, Service Agency sent Claimant's mother a letter informing her that it was denying her request to fund Club Aspire on a temporary basis while Claimant is on a waiting list to attend Tierra Del Sol Day Program (TDS). Claimant was asking for funding for three hours per day, three days per week. Service Agency denied Claimant's request because Club Aspire is an "after school social recreational program and does not meet SG/PRC Purchase of Service Guidelines as a proper Adult Day Program or Title 17 regulations.

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

SG/PRC's Day Program committee has recommended 4 additional day programs which are available for [Claimant] and you to tour and select from." (Exhibit 1.) Claimant timely filed a Fair Hearing Request and this hearing ensued.

BACKGROUND

3. Claimant's 2013 Individual Program Plan (IPP) was developed on November 11, 2013. Claimant's IPP includes long and short term goals and desired outcomes. Desired outcomes are generally stated as objectives for the consumer and include services and supports needed to achieve those outcomes. Several of Claimant's goals address improving her self-care skills with less prompting, improving her communication skills, learning the value of money and making purchases more independently, and participating in a program where she will learn work skills, socialize with peers and participate in a variety of activities. The IPP specifies that Claimant and her mother will "tour day programs prior to [Claimant's] exit from school [and] select a program they believe can meet [Claimant's] needs while challenging her in a positive way." (Exhibit 6.) Once a program is selected, mother is required to inform Claimant's service coordinator. Service Agency agreed to provide Claimant with referrals to day programs.

4. During the hearing mother testified that she is concerned about Claimant's behavior because she can become stubborn and uncooperative in a group setting. Claimant insists on carrying her backpack and purse at all times. She can be vulnerable to inappropriate advances by others. Mother is particularly hopeful that Claimant will improve her social skills.

5a. Claimant completed her public school education in December, 2013. After exiting school, Claimant and her mother considered several day programs and decided on TDS. They rejected several programs because they were too far from home or had too much emphasis on either day activities or

work programs. They selected the TDS program because they believed it would provide a transition from school to employment. TDS is vendored as a day program. It includes both site-based and community-based activities.

5b. In January, 2014, Claimant and her mother agreed she would enroll in TDS. The program had a one to six month waiting list at the time. Claimant is still on the waiting list which continues to be from one to six months.

6. Because of the waiting list at TDS, Mother requested that Service Agency fund Club Aspire. Mother believes Club Aspire is an appropriate program for Claimant while waiting for an opening at TDS. Club Aspire is a community-based program that involves Claimant in a variety of social activities. Activities include bowling, hiking, picnics and going to the beach and movies. Many of the consumers who attend Club Aspire were schoolmates of Claimant. Several staff members are parents of children with developmental disabilities. Mother believes that having staff members that are also parents, and the kinds of activities available at Club Aspire, will help Claimant develop and improve her social skills. She is particularly concerned with Claimant's vulnerability and her need to learn how to protect herself. Mother believes that Club Aspire is effectively addressing this issue. Claimant testified about how she is learning to avoid unwanted advances from other consumers by telling them no and reporting the behavior to a staff member. On the other hand, Club Aspire does not meet several of the goals identified in Claimant's IPP, including increased independence in self-help, managing money and making purchases, and transitioning to a work-based program.

7. Daniela Santana (Santana), Service Agency Fair Hearing Manager testified that Service Agency agrees that TDS is an appropriate program for Claimant. It does not believe that Club Aspire is appropriate. Service Agency

vendors Club Aspire as a Community Integration program for individuals 18 years-old and older. It has a staff to consumer ratio of one to four. It is authorized to charge \$9.27 per hour. Service Agency considers Club Aspire a social recreation program and takes the position that section 4648.5 prevents the agency from funding it except in exceptional circumstances. Santana acknowledged that socialization is important but thinks it is not the only consideration when selecting a program.

8. According to Santana, Service Agency has referred Claimant to several Adult Day Programs that are appropriate based on the desired outcomes identified in her IPP. Santana testified that Service Agency wants to fund a meaningful program for Claimant consistent with its Purchase of Service Policy (POS). According to Service Agency POS, Adult Day Programs "are designed to develop, maintain or increase self-care, self-advocacy, employment training, community integration, and social, mobility, and behavior skills." (Exhibit 7.) Because of the waiting list at TDS, Service Agency recently referred Claimant to In2Vision, an individually tailored one to one program that can address a variety of Claimant's needs, including self-help, mobility, shopping, and independent living skills as well as skills that may lead to employment. Service Agency vendors In2Vision as a Community Integration Program. Because of the specialized nature of the In2Vision program, the authorized rate of payment is \$25.65 per hour. Service Agency also referred Claimant to several additional programs that would provide what it considered meaningful activities while Claimant waits for an opening at TDS.

9. Mother met with In2Vision staff but declined the program because it is an individualized program that does not involve Claimant in activities with

other consumers. Mother also testified that she called the other programs Service Agency had referred her to but did not receive a call back.

LEGAL CONCLUSIONS

1. The Lanterman Act governs this case. An administrative hearing to determine the rights and obligations of the parties, if any, is available under the Lanterman Act to appeal a regional center decision. (§§ 4700-4716.)

2. The standard of proof in this case is a preponderance of the evidence, because no applicable law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.) Because Claimant is requesting a new service, she bears the burden of proof. In seeking government benefits, the burden of proof is on the person asking for the benefits. (See, *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 (disability benefits).)

3. The Lanterman Act sets forth a regional center's obligations and responsibilities to provide services to individuals with developmental disabilities. (See §§ 4640 et seq.) As the California Supreme Court explained in *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388, the purpose of the Lanterman Act is twofold: "to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community" and "to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community." In addition to assisting consumer's and their families "in securing those services and supports which maximize opportunities and choices for living, working, learning, and recreating in the community . . . [e]ach regional center design shall reflect the maximum cost-effectiveness possible and shall be based on a service coordination model"(§ 4640.7.)

4. Under the Lanterman Act, a consumer's needs and the services and supports required to achieve the consumer's goals are identified as part of the individual program planning process. (§§ 4646 et seq.)

5. The IPP and the provision of supports and services is intended to be "centered on the individual and family[,] . . . take into account the needs and preferences of the individual and family, where appropriate[,] . . . 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." (§§ 4646, subd. (a), 4646.5.) The IPP "is developed through a process of individual needs determination," should involve the consumer and her parents, and should be prepared jointly by the planning team. (§ 4646 subd. (b).) "Decisions concerning the consumer's goals, objectives, and services and supports that will be included in the consumer's individual program plan and purchased by the regional center or obtained from generic agencies shall be made by agreement between the regional center and the consumer . . . at the program plan meeting." (§ 4646, subd. (d); see also §§ 4646.7, 4648.) The program planning team may meet again if an agreement is not reached. (§ 4646, subd. (d).) If the parties are unable to reach an agreement, the consumer or her authorized representative may request a fair hearing. (§§ 4700 et seq.)

6. While a consumer and her parents' preferences and desires regarding goals and objectives and services and supports are to be given consideration in the planning process, regional centers are not authorized to purchase any and all services a consumer or her family may desire. (See §§ 4640.7, 4646, 4646.4, 4646.5, 4659, 4686.2.) Regional center design must "reflect the maximum cost-effectiveness possible" (§ 4640.7, subd. (b).)

7. When purchasing services pursuant to an IPP, regional centers must ensure, among other things, "(1) Conformance with the regional center's purchase of service policies, as approved by the department [of developmental services] pursuant to subdivision (d) of Section 4434. [¶] (2) Utilization of other sources of services and funding as contained in Section 4659." (§ 4646.4, (subd. (a).)

8. Section 4648.5 provides a regional center may not purchase "[s]ocial recreation activities, except for those activities vendored as community-based day programs." Despite this prohibition, "[a]n 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." (§ 4648.5, (subd. (c).)

9. In light of Factual Findings 1 through 9 and Legal Conclusions 1 through 8, Claimant has met her burden to show that Club Aspire is an appropriate temporary program for Claimant while she waits for an opening at TDS or another day program. As used in section 4648.5, subdivision (c), the word "ameliorates" means to make something better. (See www.merriam-webster.com/dictionary/ameliorate). While Club Aspire is not a program designed to meet several goals identified in Claimant's IPP, Claimant has presented sufficient evidence to show that it will address the goal to improve her social skills, on an interim basis while waiting to begin TDS or another day program. In

this case, Club Aspire is the primary way that this need can be addressed because Claimant is not currently enrolled in a day program.

9b. Once Claimant begins attending a day program, Club Aspire will no longer be the primary program to address her social skills goal. At that point, Service Agency may discontinue funding of Club Aspire. Moreover, Service Agency may reevaluate Claimant's participation in Club Aspire at Claimant's next IPP if Claimant has not yet enrolled in an adult program designed to meet her IPP goals.

ORDER

Claimant's appeal from Service Agency decision to deny funding for Club Aspire until she begins attending a day program. Service Agency shall fund Club Aspire for a total of nine hour per week until such time as Claimant begins attending TDS or another adult program to which the parties have agreed.

Dated: June 29, 2014

DEBORAH M. GMEINER

Administrative Law Judge

Office of Administrative Hearings

NOTICE

UNDER THE LANTERMAN DEVELOPMENTAL DISABILITIES SERVICES ACT, THIS IS A 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.