

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

OAH No. 2014051171

C.G.,

Claimant,

vs.

WESTSIDE REGIONAL CENTER,

Service Agency.

DECISION

This matter was heard by Erlinda G. Shrenger, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, on July 7, 2014, in Culver City.

Claimant was present at the hearing and represented by her authorized representative (AR) Raul G., who is also her brother.¹

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

The documentary and testimonial evidence described below was received, and argument was heard. The record was closed and the matter was submitted for decision on July 7, 2014.

¹ Claimant and her family members are identified by first name and last initial, or by title, to protect their privacy.

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ISSUES

(1) Should the Service Agency provide funding to increase claimant's tutoring hours from 90 hours per six months (i.e., 15 hours per month) to 120 hours per six months (i.e., 20 hours per month)?

(2) Should the Service Agency be required to fund claimant's individual tutoring services beyond September 30, 2014?

EVIDENCE RELIED UPON

Documentary: Service Agency's exhibits 1-11; claimant's exhibits A-H.

Testimonial: Lisa Basiri; Barbara Bramson-Takeuchi; Raul G.; and claimant.

FACTUAL FINDINGS

PARTIES AND JURISDICTION

1. Claimant is a 23-year-old female. She is a consumer of the Service Agency on the basis of her diagnosis of intellectual disability (mild) and cerebral palsy.

2. Pursuant to claimant's individual program plan (IPP) dated October 14, 2013, the Service Agency agreed to provide funding for claimant's tutoring services from January 1, 2014 through March 30, 2014.

3. By letter dated March 24, 2014, and a Notice of Proposed Action dated March 27, 2014, the Service Agency notified claimant of its decision to deny her request to increase her tutoring hours from 15 hours to 20 hours per month. The Service Agency agreed, however, to continue funding 15 hours per month of tutoring for an additional six months to September 30, 2014.

4. On May 12, 2014, claimant's AR filed a fair hearing request, on claimant's behalf, to appeal the Service Agency's decision to deny her request to increase her tutoring hours from 15 hours to 20 hours per month. The fair hearing request indicates that claimant is attending West Los Angeles College as a special needs student; she is reading at a sixth grade level and her math skills are at a first grade level; and she needs the additional tutoring hours to help her to study and complete her college homework.

5. In or about June 2014, Mary E. Rollins of WRC held a meeting with claimant, claimant's AR, and claimant's tutor, Barbara Bramson-Takeuchi (Ms. Bramson). Following that meeting, the Service Agency affirmed the denial of claimant's request to increase her tutoring hours. The Service Agency notified claimant's AR of this decision by letter dated June 5, 2014. This hearing ensued.

CLAIMANT'S BACKGROUND

6. Claimant lives at home with her mother. She has limited function of her extremities due to her diagnosis of cerebral palsy. She has AFO's (leg braces) to assist with her ambulation for short distances. She uses a wheelchair for longer distances. She requires assistance with personal care tasks, such as bathing, toileting, and brushing teeth. She can dress herself with minor prompting. She can clean her room, but all other household chores are completed by her mother and brother. Claimant relies on her mother for all meal preparation, as claimant is unable to cook and can only heat meals in the microwave. Claimant can

communicate her needs and wants with minor difficulties. She omits certain sounds when speaking but she does not give up. She will make every effort to get her point across. Claimant will remain on topic and answer questions asked of her. She is bilingual in Spanish and English.

7. At the present time, the Service Agency is funding the following services for claimant: respite of 14 hours per month; tutoring services from Professional Tutors of America Inc.; Performing Arts Studio day program; reimbursement for transportation to and from the day program; and the GAP program provided by Focus on All Child Therapies (FACT). The tutoring services are funded through September 30, 2014. All other services are funded through November 30, 2014. (Exh. 5.)

TUTORING SERVICES

8. In February 2011, claimant, who was age 20, was attending a special day class at Venice High School. She had a one-to-one aide in the classroom to provide support for her ambulation. In claimant's individual program plan (IPP) dated February 28, 2011, claimant's mother expressed concern regarding her daughter's lack of reading skills. At that time, claimant was unable to read and could only recognize a few words.

9. In May 2011, claimant's family requested that the Service Agency provide funding for an in-home tutor for the purpose of teaching claimant how to read. The Service Agency denied the request, and claimant's family filed a fair hearing request to appeal the denial.

10. (A) On August 2, 2011, a hearing on claimant's fair hearing request was held in OAH case number 2011060342, before Administrative Law Judge Amy C. Lahr. Following that hearing, Judge Lahr issued a decision which granted claimant's appeal and ordered the Service Agency to fund an individual in-home

tutor for two hours per week, for one year. It was also ordered that, during the one year period, claimant's family was to pursue an appeal of the school district's denial of their request for an individual tutor for claimant.

(B) Judge Lahr's decision states, in part: "The evidence showed that the individualized attention and structure which a tutor can provide is critical to Claimant's acquisition of reading comprehension, and is essential for independent living. Claimant's ability to read, and live an independent life, are primary goals within her IPP. Although Claimant receives some assistance at school, the evidence showed that it has not been sufficient to teach claimant how to read; she needs the undivided attention that an individual tutor can provide." (Exh. 8.)

11. As stated in claimant's IPP dated October 10, 2011, the Service Agency funded individual tutoring sessions for claimant provided through Professional Tutors of America Inc. Ms. Bramson began working as claimant's tutor in October 2011. At that time, claimant was age 21 and completing her last year at Venice High School. Claimant's tutoring sessions with Ms. Bramson were two times per week, one hour per session.

12. Claimant's individualized education program (IEP) dated October 26, 2011, reported that, in the area of functional English, claimant was "functioning at a K-1 level" and could copy words from her weekly functional skills vocabulary list and put the words in ABC order with assistance. The IEP noted that claimant's reading was "improving due to the tutoring she is receiving twice a week for 30 minutes on campus for ten weeks through the PAL Intervention For Reading and Writing Program." The IEP noted that claimant was "also receiving a total of 3.5 hours of personal home tutoring twice a week." (Exh. F.)

13. In October 2012, claimant was no longer in the public school system. Instead, she was attending the day program at Performing Arts Studio funded by the Service Agency. Claimant's IPP dated October 22, 2012, indicates that the Service Agency was also continuing to fund her individual tutoring sessions with Ms. Bramson for three hours per week (i.e., 15 hours per month). As stated in the IPP, claimant's family "reported that [claimant's] reading level has increased and they are noticing her interest in reading. In addition, she is now comfortable sending text messages to family and friends." Claimant's family formally requested that the Service Agency continue to fund the tutoring past the termination date of December 31, 2012. The October 22, 2012 IPP states that the Service Agency would fund the tutoring services, twice per week, one-hour sessions, from January 1, 2013 through June 30, 2013. As noted in Finding 7 above, the Service Agency is currently funding claimant's tutoring services through September 30, 2014.

14. Claimant is currently attending summer school at West Los Angeles College (WLA College), from June 16, 2014 through July 27, 2014. She will be attending WLA College in the fall, which runs from September 1, 2014 through December 21, 2014. Claimant will be taking one course in mathematics/arithmetic.

15. Claimant receives accommodations from the disabled students program at WLA College. For the 2014 fall semester, claimant will receive test taking accommodations, such as extra time to complete tests, distraction-reduced exam space, a reader, a scribe, and supervised breaks. She will also receive classroom accommodations, including note taking assistance, assistive technology, copies of lecture notes, and preferential seating.

16. Ms. Bramson has been providing one-to-one tutoring for claimant, at claimant's home, since October 2011. When the tutoring first started, Ms. Bramson found that claimant was unable to read letters and did not know the vowels. She could only read words if there was a corresponding picture. Ms. Bramson used phonics flashcards to teach claimant how to sound out letters and words. For the tutoring sessions, Ms. Bramson brings books from the public library covering different reading grade-levels and subject matter. She consults with the librarian to identify appropriate materials for claimant. She also uses workbooks provided by Professional Tutors of America. Some of the books are labeled by grade levels by the publisher. Ms. Bramson uses those grade levels to determine claimant's performance level and progress. Ms. Bramson also works with claimant on her math skills, which are currently at a first grade level.

17. According to Ms. Bramson, claimant was initially reading books at the kindergarten level. Currently, claimant is reading books at the sixth grade/seventh grade level, although she still must sound out words using phonics. Ms. Bramson testified that claimant cannot read a book independently. Rather, she reads the books with Ms. Bramson, who will then test her comprehension by asking questions about the story or having claimant explain some aspect of the story. According to Ms. Bramson, she has not worked with claimant on reading a grocery list, but thinks that claimant would be able to read some words on such a list.

18. Ms. Bramson has found that claimant has a good attitude during the tutoring sessions and is eager to learn. At this hearing, claimant testified that she wants to continue her tutoring with Ms. Bramson, because Ms. Bramson is helping her to learn and she "likes to learn."

PARTIES' CONTENTIONS

19. (A) As stated in the fair hearing request, claimant is requesting an additional five hours per month of tutoring hours with Ms. Bramson to assist claimant with studying and completing her homework from WLA College. Claimant's brother would like more tutoring hours with Ms. Bramson instead of using services from the GAP program. Claimant's brother believes that the tutoring by Ms. Bramson is helping his sister learn. He has noticed that claimant's verbal communication has increased. Claimant now has conversations with her family members and also initiates conversations with other students at school when she needs help.

(B) Claimant's brother contends that claimant no longer wants the GAP program or the day program at the Performing Arts Studio. He contends those programs are not as helpful to improving claimant's learning abilities as the in-home tutoring sessions with Ms. Bramson. For example, the GAP program sessions on the days that claimant can attend are held at a church on certain days, and a synagogue on other days. Transportation is difficult as there is limited parking at those locations, which is important given claimant's limitations with mobility. Claimant's brother testified that, at the church, claimant's activity was to do cooking in the kitchen; at the synagogue, claimant's activity was watching television or a movie. Claimant's brother contends his sister can cook or watch television at home. Further, claimant's brother contends the Performing Arts Studio day program is not appropriate because the focus of that program is singing, dancing, and theater. Claimant is unable to fully participate in those activities due to her disability.

(C) Claimant's brother contends claimant needs someone to motivate her to learn and increase her interest in different subjects, which is what he feels

happens in the individual tutoring sessions with Ms. Bramson. Claimant's brother testified that claimant wants to become a motivational speaker and inform and motivate other people like her that there is way for them to get an education. Claimant's brother contends that the additional tutoring hours being requested are needed to help claimant achieve her goal of obtaining a college degree.

20. The Service Agency contends that the additional five hours per month of tutoring requested by claimant are duplicative of the services provided through the GAP program, which the Service Agency is currently funding. The Service Agency also notes that the original purpose of the tutoring was to teach claimant how to read. That goal has been met. According to Ms. Bramson claimant's reading skills are now at a sixth grade/seventh grade level.

21. The GAP program, provided through FACT, is a community-based program whose purpose is "to provide adults with developmental disabilities with supported hands-on experiences which will assist in their successful transition into adult life and adult responsibilities. The GAP program is designed as a time-limited community day service with a maximum of four years in duration for each person served." Within the four-year timeframe, participants will have met goals that will help them "to successfully transition from the GAP program into self-directed education, work and community activities." (Exh. 11, pp. 5, 7.)

22. Each participant in the GAP program develops an "individual personal plan" that contains goals established through an extensive person centered planning process involving the individual, FACT and GAP program staff, and the individual's circle of support. The goals in an individual personal plan may include personal outcomes, vocational goals, educational goals, and self-advocacy goals. Examples of educational goals in the GAP program include learning about and accessing college disabled student services; enrolling and

registering for college classes; obtaining tutoring and mentoring assistance with class-work as needed; participating in non-curricular college activities; learning time management and how to cope with unstructured time; and developing and enhancing social skills in college environments. (Exh. 11, pp. 6-7.)

23. The GAP program requires that all GAP activities will occur in natural community, education and business environments. The GAP program provides services and supports at WLA College including, but not limited to, "on campus tutoring, access of disabled student services, support during unstructured time between classes, access and support for non-academic college activities, [and] developing career goals and plans." (Exh. 11, p. 7.)

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 1-5.)

2. The State of California has accepted a responsibility for persons with developmental disabilities and an obligation to them which it must discharge. (§ 4501.) The overriding policy statement found in the Lanterman Act is that the regional centers must do everything necessary to allow the developmentally disabled to be integrated into the community and become as

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

independent as possible. It is the intent of the Legislature that regional centers provide supports and services that, among other things, respect and support the decision making authority of the family, are flexible and creative in meeting the unique and individual needs of families as they evolve over time, recognize and build on family strengths, natural supports, and existing community resources, and are designed to meet the cultural preferences, values, and lifestyles of families. (§ 4685, subd. (b).)

3. The Lanterman Act provides that "[a]n array of services and supports should be established 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 in to the mainstream life of the community." (§ 4501.)

4. A fundamental premise of the Lanterman Act is that the determination of which services and supports are necessary for each consumer must include a consideration of "the needs and preferences of the consumer" (See, e.g., §§ 4512, subd. (b), and 4646, subd. (a).) Consumers of regional center services have the right to make choices in their own lives, including "where and with whom they live, their relationships with people in their community, the way they spend their time, including education, employment, and leisure, the pursuit of their personal future, and program planning and implementation." (§ 4502, subd. (j).)

5. The regional center's determination of which services and supports are necessary for each consumer shall be made through the individual program plan (IPP) process, based on "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." (§ 4512, subd. (b).)

6. The Lanterman Act contemplates that the provision of services shall be a mutual effort by and between regional centers and the consumer and/or the consumer's family. The foundation of this mutual effort is the formulation of a consumer's IPP. A consumer's IPP "shall be reviewed and modified by the planning team . . . as necessary, in response to the person's achievement or changing needs," (§ 4646.5, subd. (b).) The creation of an IPP is a collaborative process. (§ 4646.) The IPP is created after a conference consisting of the consumer, the consumer's representatives, regional center representatives, and other appropriate participants. (§§ 4646 and 4648.)

7. The services and supports that a regional center may provide to consumers includes, but is not limited to, "education." (§4512, subd. (b).)

8. When a person seeks to establish eligibility for government benefits or services, the burden of proof is on him. (See, e.g., *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 (disability benefits).) The standard of proof in such cases requires proof by a preponderance of the evidence, because no other law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.) Thus, Claimant has the burden in this case of proving by a preponderance of the evidence she is entitled to funding for 20 hours per month of tutoring services, and the tutoring services should be provided beyond the current termination date of September 30, 2014.

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DISCUSSION

9. For the reasons set forth below, the Service Agency is not required to provide funding for an additional five hours per month of tutoring. However, the Service Agency shall be required to continue funding claimant's current tutoring services of 15 hours per month through December 31, 2014.

10. The Service Agency shall not be required to provide funding to increase claimant's tutoring hours to 120 hours per six months (i.e., 20 hours per month). Claimant's evidence did not establish a need or justification for the additional five hours per month of tutoring services. Claimant has made progress in her reading skills under the current 15 hours per month of tutoring. She is now reading at a sixth grade/seventh grade level. Claimant is currently attending summer school at WLA College, while receiving the 15 hours per month of tutoring with Ms. Bramson. No evidence was presented that claimant needs additional hours of tutoring in order to complete her work during summer school.

11. (A) The Service Agency's funding of claimant's tutoring shall be extended through December 31, 2014. "Regional center funds shall not be used to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services." (§ 4648, subd. (a)(8).) Regional centers, when purchasing services, must utilize "generic services and supports when appropriate." (§ 4646.4, subd. (a)(2).)

(B) Claimant will be a student at WLA College during the fall semester, which runs from approximately September 1 - December 21, 2014. She is eligible to receive services from the Disabled Students Program at the college. Claimant's brother has assisted her in securing test taking and classroom accommodations

for her current summer course and the upcoming fall semester. To the extent that claimant requires tutoring services to assist with her studying and completing homework and classwork at WLA College, claimant must pursue such tutoring services from the Disabled Students Program, which is a generic resource available to claimant. Claimant can use her services from the GAP program to "[o]btain tutoring/mentoring assistance with class-work as needed" and to obtain "on campus tutoring." Since it was not established by the evidence whether claimant can secure tutoring services through the Disabled Students Program in time for the upcoming fall semester, the Service Agency shall continue funding the current tutoring through December 31, 2014.

(C) However, claimant shall be required to actively pursue tutoring services from the Disabled Students Program if she requires and desires such services after December 31, 2014. Prior to her next scheduled IPP planning meeting in October 2014, claimant shall contact the Disabled Students Program regarding the availability of tutoring services, and shall provide the Service Agency with documentation confirming her contacts and communications with the Disabled Students Program regarding tutoring services. Claimant shall do these things prior to her next scheduled IPP planning meeting in October 2014 so the issue of tutoring and claimant's needs and services can be discussed productively in crafting claimant's next IPP.

ORDER

Claimant's appeal is granted in part and denied in part as follows:

1. The Service Agency shall continue funding of claimant's tutoring services through Professional Tutors of America Inc. at the rate of 90 hours per six months (i.e., 15 hours per month) through December 31, 2014.

2. Prior to her next scheduled IPP planning meeting in October 2014, claimant and her family shall actively pursue tutoring services for claimant through the Disabled Students Program at WLA College, and shall provide the Service Agency with documentation confirming her contacts and communications with the Disabled Students Program regarding the availability of tutoring services for the period after December 31, 2014.

3. In all other respects, claimant's appeal is denied.

DATED: July 22, 2014

ERLINDA G. SHRENGER
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.