

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

GOLDEN GATE REGIONAL CENTER,

Service Agency.

OAH No. 2015060263

DECISION

Administrative Law Judge Kirk E. Miller, State of California, Office of Administrative Hearings, heard this matter on August 10, 2015, in San Francisco, California and on August 14, 2015, in Oakland, California.

Paul Ogilvie, Manager, Regional Center Services, represented Golden Gate Regional Center (GGRC).

Claimant was represented by his mother and was not present.

The matter was submitted for decision on August 14, 2015.

ISSUE

Is GGRC required to provide the Arrowsmith Program to claimant?

FACTUAL FINDINGS

BACKGROUND

1. Claimant is a 22-year-old man who qualifies for regional center services based on his diagnosis of autism. Respondent has a normal IQ.

2. Claimant graduated from a private high school where he studied in a highly structured and supportive environment. He has been enrolled at San Francisco City College since high school, and while he initially performed satisfactorily there, he now has a 1.0 grade point average and he failed the English class he needs to pass in order to graduate. Respondent took the class a second time with accommodations and support, but was only earning a D grade and withdrew from the class. City College will not permit him to take this course a third time. Respondent would like to complete his studies at City College and transfer to a four-year school where he can earn a bachelor's degree.

3. Respondent's "executive functioning" skills are very weak. These challenges include disorganization, difficulty starting and finishing work, remembering things, keeping personal items organized and clean, prioritization, inability to write essays or reports or complete long-term projects, and controlling emotions. Respondent struggles with each of these, which in turn has compromised his academic career.

4. Claimant requested GGRC to pay for him to participate in the Arrowsmith Program (Arrowsmith) to improve his executive functioning and academic skills. Arrowsmith is a cognitive-based intervention program designed for remediating defects experienced by children with specific learning disabilities. Its purpose is to identify and strengthen deficit cognitive functions that underlie specific learning disabilities. Its premise is that the affected cognitive areas that contribute to the learning disabilities can be improved through targeted, systematic cognitive exercises.¹ It is a proprietary program and for this reason a detailed description of how the program works is not available.

¹ Aerosmith Research Initiatives Report: A Brain-Based Intervention Program that Changes Cognition, March 2014.

5. The Arrowsmith Program was developed by a professor at the University of Calgary and was founded about 35 years ago. It is offered through The Learning Studio in Burlingame. Both respondent's brother and sister are graduates of Arrowsmith, and both found it "life changing." Arrowsmith greatly improved their ability to understand and process information, and with it their academic performance significantly improved.

6. On May 26, 2015, GGRC issued a Notice of Proposed Action (NOPA) in which it advised claimant that it would not pay for him to attend Arrowsmith. The reasons for the denial as set forth in the NOPA are: "(a) there is a generic resource (i.e. California Department of Rehabilitation) through which funding should be pursued; (b) this program is not an evidence-based treatment for individuals with Autism Spectrum Disorder; and, (c) this program is not vendorized to provide services to individuals served by a regional center."

Claimant appealed the decision and this hearing followed.

GGRC'S EVIDENCE

7. Juliet Sousa, claimant's supervising social worker, testified regarding the development of his Individual Program Plan (IPP), and the team process used to add services to the IPP. The portion of the IPP that deals with claimant's education situation provides as follows:

Claimant attends City College, where he is in his second semester of his second year. Claimant is slated to graduate in spring of 2005 contingent on the completion of certain prerequisites, including an English language requirement (section 1A or 1B, he will need to confirm with the school). . . . Overall, claimant is a good student, who excels in the subject of mathematics. He is considering transferring to Cal

State or San Francisco State based on their reputable math departments.

Under “objective and supports” the IPP states: “Claimant will continue to attend classes to earn a college degree. Parents will help provide support for their son in earning a degree.”

8. Sousa explained that under the Lanterman Developmental Disabilities Services Act (Act) (Welf. & Inst. Code, § 4500 et seq.), GGRC is only permitted to contract with vendored providers, and Arrowsmith is not vendored. She explained that when the IPP team met to consider the Arrowsmith program, the team was not in agreement about providing the program, because it was not vendored and because the team did not feel that its efficacy could be determined, because of a lack of clinical studies on participant outcomes. Sousa stated she did not know how likely it would be for claimant to complete his IPP goals without the service. She stated there are a variety of things an individual can do to live independently, but going to college by itself may not achieve that goal.

9. At the time the NOPA was issued, Sousa believed that generic resources were available to pay for the Arrowsmith Program.

10. Telford Moore, Ph.D., is a licensed clinical psychologist who performs eligibility assessments for GGRC. Dr. Moore reviewed the results from various tests claimant has taken, but did not make a determination about whether claimant has an executive functioning deficit.

11. Dr. Moore described the criteria GGRC uses in determining whether a program is experimental or if sufficient clinical evidence is available to confirm its efficacy. GGRC uses criteria developed and approved by the National Autism Center and by the California Autism Professional Training and Information Network (CAPTAIN) to assess programs. The information available about Arrowsmith was insufficient to

determine what treatment modalities it uses, and no peer-reviewed studies were available showing the benefits of the program for its graduates. He felt that the studies claimant provided lacked scientific integrity, and not enough information was available from Arrowsmith about the methods it uses, to determine if it meets the CAPTAIN criteria. For these reasons, he concluded Arrowsmith is still experimental and ineligible for vendorization.

12. GGRC did not receive an application for vendorization from The Learning Studio on behalf of Arrowship.

CLAIMANT'S EVIDENCE

13. Claimant's mother described claimant's executive functioning challenges. In the absence of a highly structured environment, he is likely to fail. He does not open his mail and cannot pay bills. He struggled in college because of his inability to express himself in a written essay and because he is unable to get to class on time. He is not able to follow-up when he has problems that need a solution, he is unable to advocate for himself, and in five years of study he has been unable to get past certain basic courses. Claimant is now at risk of losing his funding from the Department of Rehabilitation because of his low grade point average.

14. Claimant's mother has looked into other programs that she thought might be helpful to claimant, but they are all more expensive than Arrowsmith. She believes Arrowsmith would be the best for claimant because he is willing to take the program and because she feels it will actually improve his thinking and executive functioning skills, rather than merely offering supports that will not have an ongoing value. This is the only program she has found that she believes treats executive function deficits. Claimant's brother and sister completed the Arrowsmith program and their problems prior to taking it were very similar to the ones that claimant now has. She provided

information about scholarly studies that have evaluated Arrowsmith, although they were either described as “preliminary” or have not been peer reviewed.

15. Claimant has become frustrated because he has seen his friends move forward in college, while he is stuck. Claimant understands the need to prepare for the future and would like to succeed going forward.

16. Claimant’s mother understood that Arrowsmith has submitted its request for vendorization numerous times to GGRC. The evidence was, however, that an error was made by Arrowsmith and the application for vendorization was sent to a different agency.

17. Claimant is dissatisfied with the IPP and the process by which it was developed, because when the Arrowsmith program was declined, Claimant was “not offered any alternatives.” The information contained in the IPP is no longer current and does not correctly describe claimant’s situation. Claimant is not on the way to graduating from City College, and in the absence of other supports, he is likely to fail. While the IPP states that “[Claimant] is a good student” the evidence was to the contrary, because of his low grade point average, his poor writing ability and his inability to advocate for himself. The only education assistance contemplated by the IPP is “Parents will help provide support for their son in earning a degree.” Claimant has requested additional supports and alternatives not contained in the IPP. There is a fundamental difference between what Claimant believes can be achieved to improve his executive functioning deficient, and GGRC’s view of this potential. GGRC does not believe it can be significantly improved. Further expert evaluation might inform this disagreement.²

² If an agreement cannot be reached, Claimant may request a hearing pursuant to Health and Welfare Code section 4646. subdivision (g).

18. The Department of Rehabilitation will fund training through The Learning Studios, using a version of the Arrowsmith Program, to assist claimant to meet the City College English requirement. The Department of Rehabilitation will not fund the full Arrowsmith Cognitive Program, which claimant has also requested and which is the subject of this hearing.

LEGAL CONCLUSIONS

1. The standard of proof is a preponderance of evidence.
2. The State of California accepts responsibility for persons with developmental disabilities under the Act. Claimant is eligible for services under the Act by virtue of his autism.
3. The Act directs regional centers to develop and implement an IPP for each individual who is eligible for regional center services. (Welf. & Inst. Code § 4646.) The IPP states the consumer's goals and objectives and delineates the services and supports needed by the consumer to implement his goals and objectives. (Welf. & Inst. Code §§ 4646, 4646.5, 4512, subd. (b).) Each consumer is assigned a service coordinator, who is charged with the task of implementing and monitoring each IPP. (Welf. & Inst. Code 4647.) GGRC denied Claimant's request to attend the Arrowsmith Cognitive Program as part of his IPP. (Findings 6, 7-9.)
4. Welfare and Intuitions Code section 4648, subdivision (a)(16), provides:

[R]egional centers shall not purchase experimental treatments, therapeutic services, or devices that have not been clinically determined or scientifically proven to be effective or safe or for which risk and complications are unknown.

Although claimant offered substantial anecdotal evidence, and preliminary scholarly investigation regarding the effectiveness of the Arrowsmith program, this evidence did meet the test established by section 4648, subdivision (a)(16).

5. Welfare and Institutions Code section 4648, subdivision (a)(8) provides :

Regional center funds shall not be used to supplant the budget of any agency that has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services.

The Department of Rehabilitation advised claimant that it would not pay for his participation in the Arrowsmith Cognitive Program. (Finding 18.) GGRC did not establish that generic public funds are available to pay for this service.

6. Welfare and Institutions Code section 4648, subdivision (a)(3)(A) provides:

Vendorization or contracting is the process for identifying selection, and utilization of service vendors or contractors, based on the qualifications and other requirements necessary in order to provide the service.

Arrowsmith has not been vendored by GGRC to provide services, and GGRC may only provide services through vendored providers. (Finding 16.)

7. It is understandable that given the success claimant's siblings have experienced as a result of attending the Arrowsmith Program, that he would want to do so as well. It is not possible to order GGRC to pay for the program, both because of the absence of peer reviewed studies of its effectiveness, and because the Office of Administrative Hearings does not have the authority to order a regional center to

vendorize Arrowsmith or any other provider. Claimant would benefit from a discussion of alternatives to the Arrowsmith Program as part of his IPP.

ORDER

1. Claimant's appeal is denied.
2. Claimant and GGRC will conduct an IPP team meeting within 20 days of the date of this decision.

DATED: August 27, 2015

_____/s/_____

KIRK E. MILLER

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.