

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of :

CLAIMANT

and

SAN GABRIEL/POMONA REGIONAL
CENTER,

Service Agency.

OAH No. 2016100599

DECISION

Jennifer M. Russell, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Pomona, California on May 3, 2017. Daniela Santana represented San Gabriel/Pomona Regional Center (SGPRC or service agency). Mother represented Claimant.¹

Testimonial and documentary evidence was received, the case was argued, and the matter was submitted for decision at the conclusion of the hearing. The Administrative Law Judge makes the following Factual Findings, Legal Conclusions, and Order.

¹ Claimant and Claimant's mother are not identified by their names to preserve confidentiality.

ISSUE

The sole issue for determination is whether the service agency should fund swimming for Claimant through Casa Colina.

FACTUAL FINDINGS

1. Claimant is a seven-year-old consumer of SGPRC due to his qualifying diagnosis of Autism.
2. Claimant's most recent Individual Program Plan (IPP), dated June 16, 2016, documents Claimant's tantrums, aggression, self-injurious behaviors, elopement, and lack of danger awareness. (Exhibit 3 at pp. 3 and 5.) SGPRC does not dispute and admits that Claimant presents with maladaptive behaviors and "safety concerns."
3. Claimant is attracted to bodies of water. Most recently, in January, Claimant attended a birthday party at a residence with a swimming pool, and Claimant jumped into the freezing, cold pool water. Mother is concerned about Claimant's water safety because the family recently relocated to an apartment complex with a swimming pool.
4. Prior to the family's relocation, Claimant received regular swim lessons from the East Whittier YMCA during the week. The purpose of the swim lessons was to teach Claimant how to float in a body of water and how to move to the perimeter of a pool and hang on. Those regular lessons, however, were discontinued because of the long distance between the family's new residence and the YMCA. Currently, Claimant only receives lessons at the YMCA on Saturdays, and this limitation does not provide sufficient consistency for Claimant.
5. Mother has investigated the swim classes offered at the Parks and Recreation Center in San Dimas, and she has learned that the facility that does not work with children with special needs.

6. Casa Colina is staffed with occupational therapists offering swim lessons to individuals with developmental disabilities.

7. Mother requested SGPRC to fund swimming for Claimant through Casa Colina at an unspecified frequency and for an unspecified duration. SGPRC denied the request, and Mother appealed by filing a fair hearing request. Thereafter, these proceedings ensued.

8. At the hearing, SGPRC asserted that "water is reinforcing" for Claimant and maintained that Claimant's applied interventional behavioral therapy, which is funded by a generic source, should be providing "something that will substitute."

9. Claimant's applied interventional behavioral program and its therapists do not offer instructions for water safety interventions or techniques.

LEGAL CONCLUSIONS

1. Under the Lanterman Developmental Disabilities Services Act (Lanterman Act),² claimant has a right to treatment and habilitation services that are a primary or critical means of ameliorating the physical, cognitive, or psychosocial effects of his developmental disability. Welfare and Institutions Code section 4648.5 so provides:

(a) Notwithstanding any other provision of law or regulations to the contrary, effective July 1, 2009, a regional centers' [sic] authority to purchase the following services shall be suspended pending implementation of the Individual Choice Budget and certification by the Director of Developmental Services that the Individual Choice Budget has been

² Welf. & Inst. Code, § 4500 et seq.

implemented and will result in state budget savings sufficient to offset the cost of providing the following services:

- (1) Camping services and associated travel expenses.
 - (2) Social recreation activities, except for those activities vendored as community-based day programs.
 - (3) Educational services for children three to 17, inclusive, years of age.
 - (4) Nonmedical therapies, including, but not limited to, specialized recreation, art, dance, and music.
- (b) For regional center consumers receiving services described in subdivision (a) as part of their individual program plan (IPP) or individualized family service plan (IFSP), the prohibition in subdivision (a) shall take effect on August 1, 2009.
- (c) An 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 of 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.

2. Claimant bears the burden of establishing his extraordinary circumstances that would warrant an exemption from the state's budget spending reductions authorized in section 4648.5. (See Evid. Code, § 500). Claimant has met that burden.

3. It is undisputed that Claimant lacks safety awareness around bodies of water and that Claimant has acted precipitously by jumping into a swimming pool. Swimming lessons for Claimant, notwithstanding its inherent recreational benefits, is therefore a critical means for providing Claimant with skills necessary for his water safety and survival. Claimant's applied behavioral intervention program is inadequate to provide Claimant with those skills. While applied interventional behavioral therapists working with Claimant may have strived to identify and reduce triggers prompting Claimant to act precipitously when near a body of water, those therapists are unable to and do not provide Claimant with the lessons or techniques Claimant requires for survival once submerged in a body of water.

4. Cause exists pursuant to section 4648.5, subdivision (c), for SGPRC to fund swimming for Claimant through Casa Colina by reason of Factual Findings 1 through 9 and Legal Conclusions 1 through 3.

ORDER

1. Claimant's appeal is granted.

2. The San Gabriel/Pomona Regional Center shall fund swimming lessons for Claimant through Casa Colina at the same frequency with which Claimant received swimming lessons at the East Whittier YMCA.

Dated:

JENNIFER M. RUSSELL

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision. This decision binds both parties. Either party may appeal this decision to a court of competent jurisdiction within 90 days.