

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

WESTSIDE REGIONAL CENTER,

Service Agency.

OAH No. 2017070675

DECISION

Ji-Lan Zang, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on September 25, 2017, in Culver City, California.

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

Claimant's mother represented claimant, who was present.¹

Oral and documentary evidence was received. The record was closed and the matter submitted for decision on September 25, 2017.

ISSUE

Whether claimant should be reimbursed for her tuition at Camp Tuvia, a summer camp for pre-school children?

¹ Claimant and her mother are identified by titles to protect their privacy.

EVIDENCE RELIED UPON

Documents: Service Agency's exhibits 1-7; claimant's exhibit A.

Testimony: claimant's mother.

FACTUAL FINDINGS

1. Claimant is a four-year-old girl who qualifies for regional center services based on a diagnosis of unspecified intellectual disability due to Down syndrome. She lives at home with her parents.

2. On June 14, 2017, WRC sent claimant a Notice of Proposed Action letter notifying her that her request for funding of (1) tuition at Camp Tuvia, a pre-school summer camp, and (2) a one-to-one aide while she attended the camp was denied. On June 29, 2017, claimant filed a request for a fair hearing appealing the denial. This hearing ensued.

3. At the hearing, claimant's mother clarified that she was able to obtain a nurse from Medi-Cal who served as a one-to-one aide while claimant attended Camp Tuvia. Therefore, she is seeking only reimbursement of claimant's tuition during the summer of 2017, in the amount of \$695.

4. Due to claimant's disability, she can walk approximately 30 steps before she loses balance. Most of the time, she is wheeled in a wheelchair. Although claimant cannot dress by herself, she makes helpful movements by lifting her arm for her shirt or holding her feet out for her pants. She is not toilet trained and has daily toileting accidents. Claimant has a difficult time using a fork or spoon. Due to dysfunction with her esophagus and stomach, she is fed exclusively via a feeding tube. Claimant knows approximately 200 signs, and she communicates her wants and needs primarily by signing. She is unable to verbalize when she is sick or hurt.

5. According to claimant's most recent Individual Program Plan (IPP), dated May 8, 2017, she currently receives services through various sources. Claimant is approved for 32 to 40 hours per week of pediatric nursing, funded by Early and Periodic Screening, Diagnostic and Treatment,² although she typically receives 20-30 hours of pediatric nursing per week. Additionally, claimant is receiving 283 hours of In Home Supportive Services, with her mother serving as the service provider. Claimant currently attends a special day classroom for orthopedically impaired children. Through her school district, she receives various services including one 45-minute session of occupational therapy per week, two 30-minute sessions of speech therapy per week, two 25-minute sessions of physical therapy per week, and extended school year (ESY)³ services. Through WRC, claimant's parents are currently receiving 28 hours per month of in-home respite services. During the month of June, 2017, claimant also received 30 hours of speech therapy and 130 hours of occupational therapy funded by WRC.

6. Although claimant received ESY services during her summer break, a three-week gap, from June 26, 2017, to July 17, 2017, existed between the end of her school year and the beginning of ESY services. During this time period, with the exception of a 5-day pre-planned hospitalization during the week of July 9, claimant's parents enrolled their daughter in Camp Tuvia, a preschool summer camp for young children without disabilities.

² The Early and Periodic Screening, Diagnostic and Treatment benefit provides comprehensive and preventive health care services for children under age 21 who are enrolled in Medicaid.

³ ESY services are special education and/or related services provided beyond the usual school year, at times when school is not usually in session, typically during the summer.

7. At the hearing, claimant's mother expressed her understanding that Welfare and Institutions Code section 4648.5 prohibited the funding of camping or social recreational activities. However, she was seeking an exemption under subdivision (c) of the statute because she contends that claimant's attendance at Camp Tuvia is a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of her developmental disability.

8. According to claimant's mother, her daughter was born in May 2013 as a premature infant with Down syndrome and numerous other medical conditions, including esophageal atresia,⁴ congenital heart defects, and nonspecific lung disease. Claimant spent the first seven months of her life in the neonatal and pediatric intensive care units (ICU). During her time in the ICU, claimant could not be carried for more than a few feet away from her crib and had no interaction with other children. After claimant was released from the ICU in late 2013, claimant was frequently hospitalized for treatment of chronic lung disease and heart defects, and she remained isolated from other children due to her medical condition.

9. In 2015, claimant's parents were given approval from claimant's doctors to enroll her in a center-based day program. Following her enrollment in a center-based program, claimant made progress in her language skills and learned 50 signs within the first several months. Claimant's parents believed that their daughter thrives in a structured classroom environment with a consistent schedule. However, they still harbored concerns about her expressive language skills and social skills. This concern was reflected in a prior IPP, dated May 11, 2016, which stated, in pertinent part:

⁴ Esophageal atresia is a congenital defect where the esophagus fails to develop as a continuous passage.

[Claimant] is more comfortable around adults and is very friendly with adults. [Claimant's mother] notes that due to [claimant's] numerous hospitalizations since birth, she has not had the opportunity to really interact with peers her age. At Pediatric Therapy Network, [claimant] is around other children, but has no real interaction with other children because most of time is spent with adults working on various therapies. [Claimant] doesn't initiate interaction with peers, but will watch her peers and per [claimant's mother] it appears that [claimant] wants to interact with them.

(Ex. 6, p. 4.)

10. In 2016, while claimant's parents were negotiating their daughter's Individual Education Program (IEP) with her school district, claimant was absent from her center-based program for approximately one month. Claimant's mother noticed that her daughter's behavior regressed during this period of absence. Claimant became belligerent and whiny, and she experienced difficulties when participating in medical therapies. Claimant's mother also believed that the prolonged absence affected claimant's cognitive skills. In support of this opinion, she notes that claimant's sorting skills regressed after a one-week break from school during the spring. Specifically, in an IEP dated May 2, 2016, claimant's school psychologist wrote, "[Claimant] is able to sort by color when objects are handed to her one at a time, average 10 out 12 objects correctly sorted. Returning from Spring Break, some regression of this skill has occurred, with an average of 7 out of 12 objects sorted correctly." (Ex. 5, p. 7.)

11. At a July 27, 2017 informal meeting between claimant's mother and the Service Agency to resolve the instant matter, WRC's representative suggested several generic community resources, such as Mommy and Me classes and trips to the park, as

possible alternatives to Camp Tuvia. However, claimant's mother did not believe that these community activities are appropriate alternatives for her daughter. According to claimant's mother, the skills that claimants needs to develop are independence from adult interaction, to the extent possible, and peer interaction in a safe and structured environment. Mommy and Me classes do not facilitate these skills because they focus on parent-child interactions but do not encourage independent play with other children. Trips to the park are not viable substitutes because claimant requires extensive adult supervision around play equipment and cannot keep up with other young children in the park.

12. Claimant's mother concluded that Camp Tuvia was the most appropriate placement for her daughter in order to address her social deficits. Camp Tuvia is a summer program for two- to five-year-old children who do not have developmental disabilities. Most of the children in attendance were two years old, who were physically the same size as claimant. The program is non-academic and involved water play, arts and crafts projects, and trips to the park and petting zoo. Claimant attended the program with a pediatric nurse funded by Medi-Cal, who acted as her one-on-one aide. The cost of the tuition was \$695.

LEGAL CONCLUSIONS

1. The burden of proof is on the party seeking government benefits or services. (See, e.g., *Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) In this case, claimant bears the burden of proving, by a preponderance of the evidence, that WRC is required to fund claimant's attendance at Camp Tuvia. (Evid. Code, § 115.)

2. WRC contends that, based on its review of claimant's circumstances under Welfare and Institutions Code sections 4646.4 and 4648.5, it cannot fund claimant's attendance at Camp Tuvia because the service is a camping service or a social recreational activity, which a parent would be required to provide for a typical child

without developmental disabilities. Claimant contends that the program is a primary or critical means for ameliorating the cognitive or psychosocial effects of claimant's developmental disability.

3. Based on Factual Findings 1 to 12 and Legal Conclusions 1 to 14, cause does not exist to grant claimant's appeal.

4. The Lanterman Developmental Disabilities Services Act (Lanterman Act)(Welf. & Inst. Code, § 4500 et seq.) sets forth a regional center's obligations and responsibilities to provide services to individuals with developmental disabilities. 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." Under the Lanterman Act, regional centers are "charged with providing developmentally disabled persons with 'access to the facilities and services best suited to them throughout their lifetime'" and with determining "the manner in which those services are to be rendered." (*Id.* at p. 389, quoting from Welf. & Inst. Code, § 4620.)

5. To comply with the Lanterman Act, a regional center must provide services and supports that "enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age." (Welf. & Inst. Code, § 4501.) The types of services and supports that a regional center must provide are "specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance

of independent, productive, normal lives.” (Welf. & Inst. Code, § 4512, subd. (b).) The determination of which services and supports the regional center shall provide is 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.” (*Ibid.*) However, regional centers have wide discretion in determining how to implement an IPP. (*Association for Retarded Citizens, supra*, 38 Cal.3d at p. 390.)

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6. As set forth in Welfare and Institutions Code section 4646, subdivision (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.

7. Welfare and Institutions Code section 4646.4, subdivision (a), provides, in relevant part:

Regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's individual program plan developed pursuant to Sections 4646 and 4646.5, or of an individualized family service plan pursuant to Section 95020 of the Government Code, the establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and when purchasing services and supports, shall ensure all of the following:

[¶] . . . [¶]

(2) Utilization of generic services and supports when appropriate. . . .

[¶] . . . [¶]

(4) Consideration of the family's responsibility for providing similar services and supports for a minor child without disabilities in identifying the consumer's service and support needs as provided in the least restrictive and most appropriate setting. In this determination, regional centers shall take into account the consumer's need for extraordinary care, services, supports and supervision, and the need for timely access to this care.

8. California Code of Regulations, title 17, section 54326, subdivision (d)(1), provides that regional centers shall not:

Use purchase of service funds to purchase services for a minor child without first taking into account, when identifying the minor child's service needs, the family's

responsibility for providing similar services to a minor child without disabilities. In such instances, the regional center must provide for exceptions, based on family need or hardship.

9. Welfare and Institutions Code section 4648.5 provides that:

Notwithstanding any other provision of law or regulations to the contrary, effective July 1, 2009, a regional center's authority to purchase the following services shall be suspended...

- (a)(1) Camping services and associated travel expenses.
- (a)(2) Social recreation activities, except for those activities vendored as community-based day programs.
- (a)(3) Educational services for children three to 17, inclusive, years of age.
- (a)(4) Nonmedical therapies, including, but not limited to, specialized recreation, art, dance, and music.

[¶] . . . [¶]

- (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 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.

10. Here, the evidence showed that services provided at Camp Tuvia are not targeted at children with disabilities. They are the same as those available to the general

public. The summer camp at issue is not a “specialized service” within the meaning of Welfare and Institutions Code section 4512, subdivision (b). It is a generic service that a family would be expected to provide to a child without disabilities. Thus, funding for attendance at Camp Tuvia would be the family’s responsibility. (See Welf. & Inst. Code, § 4646.4, subd. (a)(2) & (4); Cal. Code Regs., tit. 17, § 54326, subd. (d)(1).)

11. Furthermore, under Welfare and Institutions Code section 4648.5, subdivision (a)(2), Service Agency is required to suspend funding for camping or social recreational activities. Claimant’s mother contended that claimant is entitled to an exemption for the suspension of funding under Welfare and Institutions Code section 4648.5, subdivision (c), because Camp Tuvia is a primary or critical means for ameliorating claimant’s developmental disability. This argument was not persuasive.

12. To begin with, Camp Tuvia is not the primary means of addressing the effects of claimant’s intellectual disability. The primary means of addressing those effects remain the medical attention, the physical, occupational, and speech therapy, and specialized classroom instruction that she currently receives.

13. Participation in Camp Tuvia is also not a critical means of addressing the cognitive or psychosocial effects of claimant’s intellectual disability. Although claimant’s mother expressed concerns that prolonged absence from school affects claimant’s cognitive skills, there was no evidence that Camp Tuvia, which is not an academic program, would help claimant to maintain her cognitive skills. The decision to enroll claimant in Camp Tuvia seems to be premised on the belief that it would help claimant maintain certain social skills, by encouraging her to be independent from adults and to engage in peer-to-peer interactions. It should be noted that the duration of claimant’s participation at Camp Tuvia was a relatively short two weeks, given that she attended it from June 26 to July 17, 2017, with a 5-day absence during the week of July 9 due to a pre-planned hospitalization. Although claimant suffered some behavioral setbacks after

a month-long absence from school in 2016, there is little evidence that a two-week absence would cause detrimental regressions in claimant's behavior or social skills. Furthermore, while Camp Tuvia provided general opportunities for claimant to socialize with other children, it did not provide social skills training suited to claimant's particular needs due to her intellectual disability. During the summer break, claimant also used ESY services, which, in contrast, are specifically designed to support students with disabilities to maintain the academic, social/behavioral, and communication skills that they learn during the school year.

14. Based on the foregoing, it cannot be concluded that participation in Camp Tuvia is a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of claimant's developmental disability. The Service Agency's decision to deny claimant's request for reimbursement of her tuition at Camp Tuvia was proper.

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ORDER

Claimant's appeal is denied. WRC will not be required to reimburse claimant for her tuition at Camp Tuvia.

DATE:

JI-LAN ZANG

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.