

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

GOLDEN GATE REGIONAL CENTER,

Service Agency.

OAH No. 2018031221

DECISION

Administrative Law Judge Melissa G. Crowell, State of California Office of Administrative Hearings, heard this matter on May 2, 2018, in San Mateo, California.

Claimant was represented by her mother and conservator.¹

Director of Regional Center Services Lisa Rosene, L.C.S.W., represented Golden Gate Regional Center (GGRC).

The record was left open to permit filing of written closing statements. Claimant filed a closing statement on May 11, 2018, which was marked as Exhibit H. GGRC's closing statement was filed on May 23, 2018, and marked as Exhibit 14. The record was closed and the matter was submitted for decision on May 23, 2018.

¹ Names are not used to protect claimant's confidentiality.

ISSUES

(1) Did GGRC err when it denied claimant's request for mileage and transportation reimbursement to and from claimant's community activities?

(2) Did GGRC err when it denied claimant's request for reading, writing and math classes through Academic Trainers?

(3) Did GGRC fail to provide claimant with requested information on crisis intervention, mobile crisis information, or crisis intervention family services?

(4) Did GGRC fail to include the latest report from A.G.E.S. in the Person-Centered Individual Program Plan?

FACTUAL FINDINGS

1. Claimant is a 25-year-old consumer of GGRC who qualifies for services based on a diagnosis of Autism Spectrum Disorder. Claimant lives with her parents who are her conservators.

SCOPE OF THIS FAIR HEARING

2. Claimant's most recent Person-Centered Individual Program Plan (IPP) is dated February 22, 2018. In preparation for the development of the IPP, claimant's mother provided GGRC with a written list of 19 requests to be discussed at a telephonic IPP Planning and Consultation meeting scheduled for February 22, 2018. Five days after the meeting, on February 27, 2018, GGRC Social Worker Julie Gin responded in writing to claimant's written requests. The requests had a broad spectrum, ranging from goals and objectives to be put in the IPP, to requests for information, to requests for funded services and supports. Some of the service requests were granted, and some were denied. Claimant's mother signed the consent for implementation of the IPP on March 22, 2018.

3. On February 28, 2018, GGRC issued two Notices of Proposed Action regarding services requested by claimant's mother. The first Notice of Proposed Action (NOPA #1) denied a request for mileage and transportation reimbursement to and from a list of designated places. The second Notice of Proposed Action (NOPA # 2) denied a request for funding of four hours per week of basic reading, writing, and math classes at Academic Trainers.

4. On March 26, 2018, claimant filed a fair hearing request. The fair hearing request referenced the February IPP meeting, and attached a list of nine items, four of which are issues properly within the scope of this hearing, and are listed above. Issue one stems from NOPA #1. Issue two stems from NOPA #2. Issue three stems from claimant's request for information; and issue four stems from claimant's a request for a vendor report to be attached to the IPP.

5. At hearing, it was determined that there are five items listed on the fair hearing request that are not properly within the scope of this matter.

- a. Claimant raised a concern about other mileage reimbursement. This issue had been resolved by the time of hearing and has been withdrawn by claimant.
- b. Claimant raised two alleged errors associated with the denial of independent living services (ILS). GGRC has not denied ILS services, and is moving forward with the process for authorizing them.
- c. Claimant raised two issues associated with denial of a service request that was set forth in a Notice of Proposed Action issued April 19, 2018, some three weeks after the Fair Hearing Request was filed in this matter.

MILEAGE AND TRANSPORTATION REIMBURSEMENT

6. At the IPP meeting claimant's mother requested that GGRC provide mileage and transportation reimbursement to-and-from the following activities: (1) Half Moon Bay Coastal Trail, for hiking and to enjoy the ocean; (2) bowling and to see former

high school classmates; (3) Halloween party at PARCA; (4) San Francisco Union Square, for the lighting of Christmas tree/Menorah; (5) Disney on Ice show in San Jose; (6) Yosemite National Park, for learning hiking and enjoying nature; (7) San Francisco International Airport, to learn to show ticket and passport, go through security, in order to visit family abroad; and, (8) Santa Cruz Boardwalk for recreation.

7. GGRC funds transportation services associated with claimant's day program. None of the activities set forth in Finding 6 are part of claimant's day program

8. GGRC has determined that each of these activities falls within the category of a social or recreational activity. GGRC does not fund social or recreational activities, and does not fund transportation or mileage for such activities.

9. No evidence was presented by claimant to establish error in the determination that the mileage and transportation reimbursement are for social or recreational activities and are not for a day program.

READING, WRITING AND MATH CLASSES THROUGH ACADEMIC TRAINERS

10. At the IPP meeting claimant's mother requested that GGRC fund four hours per week of basic reading, writing and math classes at Academic Trainers.²

11. Gin contacted Academic Trainers to start the vendorization process so that GGRC could purchase the service for claimant. Academic Trainers started the process but then advised GGRC that it would not provide required information such as social security numbers or banking information. Academic Trainers elected to drop out of the process, and has not become a GGRC vendor.

² The request was specific to the provider.

12. The decision to deny claimant's request to fund reading, writing and math classes through Academic Trainers was based on Academic Trainer's decision not to become a GGRC vendor.

13. No additional evidence was presented by claimant on this issue.

INFORMATION ON CRISIS INTERVENTION, MOBILE CRISIS INTERVENTION, AND CRISIS INTERVENTION FAMILY SERVICES

14. At the IPP meeting, claimant's mother requested GGRC provide updated³ information regarding crisis intervention, mobile crisis intervention (immediate 24-hour emergency services), and crisis intervention facility services (temporary 24-hour residential services).

15. Information regarding each of these services was provided by Gin to claimant's mother on February 27, 2018. Gin did not receive a response from claimant's mother, so she assumed that the materials she sent were sufficient.

16. No additional evidence was presented by claimant on this issue.

PROVIDER'S LATEST REPORT IN CLAIMANT'S IPP

17. Claimant receives behavioral services through GGRC vendor A.G.E.S. Learning Solutions, Inc. Behavioral services were in place several years before Gin became claimant's social worker in January 2017. A.G.E.S. is supposed to provide periodic reports to GGRC.

³ GGRC had provided information regarding such services to claimant previously in 2015.

18. Behavioral Consultant Sean Blumberg works for A.G.E.S., and provides the services to claimant pursuant to an Individual Service Plan. Due to medical issues, Blumberg did not provide services from September through the end of 2017.

19. At the IPP meeting claimant's mother and GGRC discussed the provision of services by A.G.E.S. GGRC did not have possession of the proposed service plan or Blumberg's most recent report at the time of the February IPP meeting. GGRC agreed to obtain an updated service plan from Blumberg, as well as copies of earlier reports that were not in claimant's electronic record.

20. Gin requested an updated service plan from Blumberg, but did not get one until March 2018, and only after three requests and involving her supervisors. In his March 2018 report Blumberg recommended 26 hours per month of behavioral services for claimant. GGRC has agreed to fund that number of hours.

21. Gin also requested copies of Blumberg's reports for claimant. Blumberg was not responsive to these requests apparently. The reports were provided to the parties at hearing pursuant to subpoena by claimant's mother.

22. GGRC maintains all consumer records in an electronic database called "OnBase." Each consumer has his or her own electronic record. Each electronic record has its own categories for data storage. One document category is for IPP's. Another document category is for vendor reports. Reports are stored in this manner so GGRC staff can locate them easily. Reports are not maintained as attachments to an IPP. Blumberg's reports are to be maintained in claimant's consumer record in accordance with GGRC procedures.

23. In the fair hearing request, claimant asserts that GGRC failed to include the latest report from A.G.E.S. in the IPP. This is factually true; the report was not in GGRC's possession, but it has since been obtained from A.G.E.S. It was not asserted or shown

that the delay in obtaining this report harmed claimant or impacted the provision of services to her.

LEGAL CONCLUSIONS

1. The party asserting a claim generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) In this case, claimant bears the burden of proving, by a preponderance of the evidence, the four claims of error she asserts. (Evid. Code, § 115.)

2. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act (Welf. & Inst. Code, 4500 et seq.).⁴ The Lanterman Act mandates that an “array of services and supports should be established ... to meet the needs and choices of each person with developmental disabilities ... and to support their integration into the mainstream life of the community.” (§ 4501.) Regional centers are charged with the responsibility of carrying out the state’s responsibilities to the developmentally disabled under the Lanterman Act. (§ 4620, subd. (a).) The Lanterman Act directs regional centers to develop and implement an IPP for each individual who is eligible for regional center services. (§ 4646.) The IPP states the consumer’s goals and objectives and delineates the services and supports needed by the consumer. (§§ 4646, 4646.5, & 4648.)

3. When purchasing services and supports, regional centers are mandated by the Lanterman Act to conform to their purchase of service policies as approved by the Department of Development Services, and to utilize generic services and supports where

⁴ All statutory references are the Welfare and Institutions Code unless otherwise provided.

appropriate. (§ 4646.4, subd. (a).)⁵ And in securing needed services and supports to implement an IPP, regional centers are prohibited from using regional center funds “to supplant the budget of any agency that has a legal responsibility to serve all members of the public and is receiving general funds for providing those services.” (§ 4648, subd. (a)(8).)

SCOPE OF THIS FAIR HEARING

4. The due process rights under the Lanterman Act are set forth in section 4710.5, subdivision (a). It provides in relevant part:

Any applicant for or recipient of services ... who is dissatisfied with any decision or action of the service agency which he or she believes to be illegal, discriminatory, or not within the recipient’s best interests, shall, upon filing a request within 30 days after notification of the decision or action complained of, be afforded an opportunity for fair hearing.

5. As set forth in Findings 4 and 5, two issues raised by claimant in the attachment to the Fair Hearing Request concern services that have not been denied. Two issues concern a service that was denied by GGRC after the fair hearing request was filed. Due process rights arise from the denial of a service. Since requested services had not been denied the time of the filing of this fair hearing request, each of these issues is beyond the scope of this hearing and are not considered herein.

⁵ Purchase of Service Policies for GGRC are set forth in the Golden Gate Regional Center Guidelines for Developing Individual Program Plans.

6. As set forth in Finding 5, a fifth issue has been withdrawn by claimant, and is no longer at issue in this case.

MILEAGE AND TRANSPORTATION REIMBURSEMENT

7. Pursuant to section 4648.5, subdivision (a)(1), regional centers are prohibited from purchasing social and recreational activities for consumers, except those activities vendored as community-based day programs. By reason of the matters set forth in Findings 6 to 9, the evidence establishes that the transportation reimbursement sought by claimant is for transportation to social and recreational activities, not to a community based day program.

The California Legislature has authorized a limited exception to permit the purchase under the following limited circumstances:

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 to 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).) Claimant did not present evidence which would support the application of this exemption in this case.

No error has been demonstrated by the denial of this requested service.

READING, WRITING AND MATH CLASSES THROUGH ACADEMIC TRAINERS

8. Claimant seeks reading, writing and math classes through a specific provider, Academic Trainers.

The process by which regional centers identify, select and utilize services is called vendorization. (§ 4648, subd. (a)(3).) Regional centers contract with service providers that they have determined have the qualifications and other requirements necessary to provide services to the consumer. (§ 4648, subd. (a)(3).) The vendorization application and approval process is set forth in regulatory form by the Department of Developmental Services. (Cal. Code Regs., tit. 17, § 54302 et seq.) Among the requirements for vendor approval by a regional center is a complete vendor application (Form DS 1890) with all required information provided. (Cal. Code Regs., tit. 17, §§ 54310, 54320, & 54342-54355.) Once the vendor has been approved by the regional center, the vendor is given a vendor identification number based on the service to be provided. (Cal. Code Regs., tit. 17, § 54340.)

9. As set forth in Findings 10 to 13, the evidence establishes that the sole reason GGRC denied the requested service was because Academic Trainers did not complete the vendorization process in order to contract with GGRC. In the absence of vendorization approval, GGRC cannot provide services to claimant through Academic Trainers. No error has been demonstrated in the denial of this requested service through Academic Trainers.⁶

⁶ It is presumed that GGRC and claimant have discussed or will discuss provision of this service through other vendored providers.

INFORMATION ON CRISIS INTERVENTION, MOBILE CRISIS INTERVENTION, AND CRISIS INTERVENTION FAMILY SERVICES

10. As set forth in Findings 14 to 16, after the IPP meeting, GGRC provided claimant with information on crisis intervention, mobile crisis intervention, and crisis intervention family services. Claimant has not demonstrated that the information provided was deficient. No error has been demonstrated.

PROVIDER'S LATEST REPORT IN CLAIMANT'S IPP

11. As set forth in Findings 19 to 23, GGRC did not include the latest report from A.G.E.S. in the IPP as the vendor had not provided the report to GGRC. GGRC has obtained the report, and will maintain it in claimant's consumer electronic record. No error has been demonstrated.

CONCLUSION

12. Claimant has failed to demonstrate error by GGRC in the four issues properly raised in this appeal.

ORDER

The appeal is denied.

DATED: May 29, 2018

_____/s/_____

MELISSA G. CROWELL

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Judicial review of this decision may be sought in a court of competent jurisdiction within 90 days.