

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

SOUTH CENTRAL LOS ANGELES  
REGIONAL CENTER,

Service Agency.

OAH No. 2018040425

DECISION

This matter was heard before Glynda B. Gomez, Administrative Law Judge, Office of Administrative Hearings, State of California, on May 22, 2018, in Los Angeles, California.

Karmella Walker, Fair Hearings Coordinator, represented the service agency, South Central Los Angeles Regional Center (Service Agency or SCLARC). Claimant's Mother (Mother) represented Claimant with the assistance of a friend. Claimant did not attend the hearing. A Spanish language interpreter translated the proceedings.

Testimony and documentary evidence was received, the record was closed, and the matter was submitted for decision on May 22, 2018.<sup>1</sup>

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<sup>1</sup> OAH Case No. 2018040427 which was consolidated with this matter was resolved before the commencement of the hearing.

Claimant appeals SCLARC's denial of his request for funding of swimming lessons. Claimant asserts that SCLARC should fund his swimming lessons to promote water safety, assist with his sensory issues and provide him with a socialization opportunity. SCLARC contends that although Claimant may benefit from swimming lessons, it is prohibited from funding them. For the reasons set forth below, Claimant's appeal is denied.

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## ISSUE

Was SCLARC's denial of Claimant's request for funding of swimming lessons appropriate.

## FACTUAL FINDINGS

1. Claimant is a seven-year-old boy eligible for regional center services through SCLARC based upon his diagnosis of autism. He lives with his mother. Consistent with autism, Claimant has behavior, communication, sensory and social deficits.
2. Claimant attends a special day class in his local school district where he receives special education services as a student with a primary eligibility of autism and a secondary eligibility of speech/language impairment. Claimant receives school based occupational therapy and speech therapy.
3. Claimant is an active child with behavioral issues. Claimant is impulsive. On one occasion, he made an impulsive sprint for the ocean while on a beach trip with friends. An adult had to run after him and prevent him from

hurling himself into the ocean. On another occasion, he ran into a river at a park and was immediately pulled out by his mother. Both situations could have ended tragically, but for the quick intervention of attentive adults.

4. Claimant's mother would like for him to take swimming lessons at the local YMCA to improve his water safety, to soothe his sensory issues and to socialize because he has not been successful in his attempts to socialize with peers. The YMCA swimming lessons that Claimant seeks are provided by a regular swimming instructor to a group of students 14 years old and over. There was no evidence that the instructor had any specialized knowledge or training to provide lessons to the developmentally disabled or that the lessons offered any special adaptations for consumers such as Claimant. As such, the YMCA swimming lessons are generic services.

5. SCLARC provided Claimant's mother with a list of generic service providers of swimming instruction. None of the providers on the list offered services that met Claimant's needs.

6. Claimant's Individual Program Plan (IPP) dated December 13, 2017 provided eighteen Desired Outcomes which included six Desired Outcomes focused on medication and medication management, five Desired Outcomes focused on his behavior and behavior management, two Desired Outcomes focused on school- provided services, three Desired Outcomes focused on cleanliness and self-help skills, one Desired Outcome to remain in his home and Desired Outcome #17 which provides that "The Planning Team would like for [Claimant] to continue to attend community outings and recreational activities (errands, park, shopping) at least once a week in order to enhance his communication and social skills."

7. The proposed swimming lessons would provide benefits to Claimant in that the lessons would provide instruction on water safety, a physical outlet for his sensory issues and a potential social benefit. Funding of swimming lessons is consistent with Desired Outcome #17 of Claimant's IPP.

## LEGAL CONCLUSIONS

1. Claimant bears the burden of proof to establish by a preponderance of the evidence that he is entitled to the requested service.

2. The Lanterman Act sets forth a regional center's obligations and responsibilities to provide services to individuals with developmental disabilities. The Lanterman Act is meant 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. (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.) 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; Welf. & Inst. Code, § 4620.)

3. 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 to be 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.)

4. 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.

5. 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:

(1) Conformance with the regional center's purchase of service policies, as approved by the department pursuant to subdivision (d) of Section 4434.

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

(3) Utilization of other services and sources of funding as contained in Section 4659.

(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.

6. 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.

7. In addition, a regional center is responsible for using its resources efficiently. Welfare and Institutions Code section 4648, subdivision (a)(2), provides that:

In implementing individual program plans, regional centers, through the planning team, shall first consider services and supports in natural community, home, work, and recreational settings. Services and supports shall be flexible and individually tailored to

the consumer and, where appropriate, his or her family.

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

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.

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 centers' 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.

(Welf. & Inst. Code § 4648.5.)

10. Here, the evidence showed that the swimming lessons sought were not “specialized services” within the meaning of Welfare and Institutions Code section 4512, subdivision (b). Instead, the swimming lessons were the same as those available to the general public. The swimming lessons were proposed to meet a social and recreational goal of learning to swim and become safe around water and as a sensory outlet. Accordingly, the swimming lessons were not specialized services and if funded would merely provide recreational opportunities and address water safety issues. (See Welf. & Inst. Code, § 4512, subd. (b).)

11. Further, the swimming lessons at issue fall within the category of generic services that a family would be expect to provide to a typical child. Under these facts, the swimming lessons at issue were the type of social or recreational activity that is the family's responsibility and may not be funded by SCLARC. (See Welf. & Inst. Code, § 4646.4, subd. (a)(2) & (4); Cal. Code Regs., tit. 17, § 54326, subd. (d)(1).)

12. Finally, the swimming lessons fall within the category of social recreation activities contemplated by Welfare and Institutions Code section 4648.5(a) for which SCLARC's funding authority has been suspended.

13. The evidence did not establish that Claimant was entitled to an exemption from the suspension. The swimming lessons are not a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of Claimant's developmental disability and the swimming lessons are not necessary to enable Claimant to remain in his home. (See Welf. & Inst. Code, § 4648.5, subd.(a) & (c).)

14. While Claimant established that he would benefit from the swimming lessons, he needs instruction on water safety and has sensory and social issues that might be alleviated by water activity, he did not establish by a preponderance of the evidence that SCLARC must fund his swimming lessons or that he falls within an exception to the legal prohibition on funding of such services.

15. SCLARC may not fund Claimant's swimming lessons because this service is a social recreational activity or non-medical therapy for Claimant, available through generic resources in the community; and it is the type of activity that a parent would be required to provide for a typical child and SCLARC is prohibited from funding such social recreational activities. Based upon factual

findings 1 through 7 and Legal Conclusions 1 through 14, SCLARC's decision to deny funding for swimming lessons was appropriate.

## ORDER

Claimants' appeal is denied. The South Central Los Angeles Regional Center is not required to fund swimming lessons for Claimant at this time.

DATED:

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GLYNDA B. GOMEZ

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.