

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT
vs.

HARBOR REGIONAL CENTER,
Service Agency.

OAH No. 2018040460

DECISION

James Michael Davis, Administrative Law Judge (ALJ) with the Office of Administrative Hearings, State of California, heard this matter on May 23, 2018, in Torrance, California.

Claimant's¹ mother and father represented claimant. Claimant was not present.

Latrina Fannin, Manager of Rights and Quality Assurance, represented Harbor Regional Center (HRC).

Oral and documentary evidence was received at the hearing, the record was closed, and the matter submitted for decision on May 23, 2018.

ISSUE

Whether HRC should continue to provide claimant funding for the SEEK social skills program.

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¹ Party and family titles are used in lieu of names to protect claimant's privacy.

EVIDENCE RELIED UPON

In making this Decision, the ALJ relied on Exhibits 1-15, submitted by HRC², and the testimony of Miguel Flores, HRC Behaviorist; Pablo Ibanez, HRC Client Service Manager; Aline Zaragoza, SEEK Social Skills Specialist; and claimant's mother.

FACTUAL FINDINGS

OVERVIEW

1. Claimant is an 11 year old, only child. He is eligible for regional center services based on his diagnosis of Autism Spectrum Disorder (ASD).
2. Claimant is cared for and lives with his parents, who both work as licensed vocational nurses. He is in the fifth grade honors program for languages and math at a Norwalk-area middle school. There, he is in a general education classroom but also receives services from the school's Resource Specialist Program. His parents receive 42 hours per quarter of respite, which is provided by his paternal grandparents. Claimant also receives 30 minutes per week of speech therapy.
3. Although claimant is an outstanding student, he suffers from a deficiency in social skills relative to other same-aged children. These deficits include failing to initiate interactions with his peers, a compulsion to "win" and being easily distracted when the conversation does not interest him.
4. To address claimant's social skills deficits, claimant has been receiving social skills training from SEEK Education, Inc. Initiated in May 2015, this training is a carry-over service initially provided through claimant's former regional center, East Los Angeles Regional Center. The program involves both claimant and his parents and meets every Saturday morning for two hours.

² Claimant's documentary evidence was not considered because it was duplicative of HRC's exhibits 7, 9, 10, and 11.

5. HRC has been funding SEEK since October 15, 2015. At the September 21, 2017 Individual Person-centered Plan (IPP) conference, Service Coordinator Griselda Torres informed claimant's mother that HRC has a program that may outperform SEEK. Claimant's mother stated she was not interested in a different program and wished for claimant to stay with SEEK. She noted claimant enjoyed going to SEEK and he has established friendships there.

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6. The IPP was finalized on October 12, 2017. Under the section titled "Hopes and Dreams for the Future" it stated: "[Claimant's] family would like for [claimant] to continue to develop his social skills. They report social skills continue to be the primary concern at this time." It also stated that HRC would fund SEEK through October 31, 2017. Claimant's parents disagreed with terminating SEEK and advocated for continued funding. HRC agreed to a three-month extension to allow HRC staff to review the program. Funding for SEEK continued past the three-month extension as, presumably, HRC continued reviewing SEEK's effectiveness.

7. On April 4, 2018, HRC sent claimant's parents its notice of proposed decision indicating that services with SEEK would not be continued past May 11, 2018. In the April 4th letter, HRC noted that social skills training for developmentally-disabled individuals are typically on a short-term basis with ongoing opportunities to practice general skills in the home and the community. It found that SEEK has worked with claimant for nearly three years with minimal measurable progress. As an alternative, HRC recommended PEERS, an HRC-funded, short-term program that targeted social skills in more natural settings. It further suggested any ongoing need for formal training or to address skill deficits could be addressed in a home/community-based behavior program. On April 5, 2018, claimant's mother, disagreeing with HRC's proposed cancellation of SEEK, requested a fair hearing.

8. HRC's proposed decision was based on its review of claimant's file and the SEEK progress reports spanning nearly three years. An overview of the progress reports, which were generated at six month intervals, follows.

9. SEEK did an initial evaluation of claimant in May 2015. The evaluation consisted of a review of his records, an interview with his parents, and a session of direct observations in which his social skills were evaluated. The results of this initial assessment were binary with the claimant satisfactorily passing 14 of 16 social skills, e.g., initiating conversation with peers, receiving criticism well, and controlling temper in conflict situation with adults. Claimant failed in two areas: introducing self independently, and inviting others to join in activities.

10. As a result of the initial evaluation, SEEK assigned goals to both claimant and claimant's parents. The goals were introduced with the following preamble: "The following are proposed goals for [claimant's] center-based social skills training program. Goals are based on mastery of a specific sequence of prerequisite skills. As he acquires new skills and target items, programs will be progressed and/or new items introduced based on observation and data collection." (Ex. 11, p. 7.)

11. SEEK's goals for claimant's parents were that either of them (or both) were to attend social skills classes in 80 percent of opportunities within the first authorization period and either of them (or both) were to participate in the social skills class in 80 percent of opportunities within the first authorization period. These parental goals, with occasional changes in attendance or participation percentages, were duplicated in every report.

12. Claimant's initial goals were to:

- a. Identify teasing versus joking given by a peer or the instructor in 80 percent of opportunities across four sessions.
- b. Tolerate losing a game and demonstrate good sportsmanship behaviors in 80 percent of opportunities across four sessions; and
- c. Ask a question or make a comment to a peer about a non-preferred topic brought up by a peer in 80 percent of opportunities across four sessions.

Both parents' and claimant's goals had a target date of December 31, 2015.

13. The SEEK program worked on a six month assessment period. SEEK's next assessment report was dated November 15, 2015, and it concluded that claimant had

met goals b. and c., but that goal a. (identifying teasing) was still in progress. SEEK assigned claimant new goals: Greet everyone in the room with 90 percent independence across four sessions, and to continue working on his previous goal of identifying teasing; this time, at 90 percent of opportunities across four sessions. Lastly, claimant was recommended to continue SEEK social skills training for two hours per week for the next six months.

14. SEEK's next progress report was dated July 2016. There, it found that claimant's goals of identifying teasing and greeting everyone in the room were met. It set new goals of responding appropriately when a peer is not treating him well with 80 percent independence across the last four sessions and demonstrating effective team work with 80 percent independence across the last four sessions. Claimant's mother reported that claimant was making much progress in some areas and some progress in other social skills areas. SEEK again recommended two hours per week of social skills training for the next six months.

15. In February 2017, SEEK issued its next progress report. It found claimant had met the goal of demonstrating effective team work but that the goal of responding appropriately when a peer was not treating him well was still in progress. Claimant was directed to continue work on the goal of acting appropriately in the face of improper treatment of peers and a new goal was added: demonstrate the ability to appropriately seek assistance when needed with 80 percent independence across the last four sessions. Again, SEEK recommended six more months of two hours per week social skills group training.

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16. SEEK's next progress report of September 2017 reported his goal of responding appropriately when a peer was not treating him well was met, while the goal of seeking assistance was deemed to be in progress. It set goals for claimant that by May 31, 2018, he would respond appropriately when a peer is not treating him well with 100 percent independence across the last four sessions and he would appropriately approach others when he needs help across 80 percent independence across the last

four sessions. It again recommended two hours of SEEK social skills training a week for the next seven months. No reason for the increase in treatment time from six months to seven months was provided.

17. SEEK's latest progress report was dated April 8, 2018. It stated that claimant's goal of appropriately approaching others was in progress. It set new goals with a deadline of August 31, 2018. The goals were to identify when he needs help, appropriately approach others when he needs help and initiate and maintain a conversation with at least five exchanges with a peer. The report concluded with a recommendation of two hours per week of social skills group training for the next six months.

TESTIMONY AT THE HEARING

18. HRC presented two witnesses at the hearing: Miguel Flores, HRC's Behaviorist, and Pablo Ibanez, HRC Client Service Manager. Both witnesses argued that SEEK's social skills paradigm of perpetual goal setting with no end date was not HRC's preferred modality.

19. Miguel Flores holds a Master of Science degree in Behavioral Analysis and is a board-certified behavioral analyst. He is a bilingual behavioral analysis consultant who works with HRC service coordinators discussing anything behaviorally based affecting clients or programming. He also teaches classes to caregivers.

20. From his review of claimant's files, Mr. Flores became familiar with claimant's developmental disability (ASD) and how it manifests in his social behavior. He also reviewed the above-summarized SEEK progress reports.

21. In Mr. Flores' opinion, SEEK's ongoing social skills training for claimant did not show measurable progress. His testimony was convincing because SEEK's progress reports over nearly three years show similar goals accomplished and reset every six months. Instead, he endorsed a program called PEERS. PEERS differs from SEEK in that, rather than being on-going, it is a focused 14-week program in which a different social skill topic is worked on every week. It strongly emphasizes parents and caregivers

working on facilitating social skills development outside of the classroom. A particular concern of Mr. Flores regarding SEEK's model is that ongoing, long-term group social skills training can lead to prompt dependency in which the participant is trained to rely on the facilitator, rather than learning to apply new social skills generally in a more systematic manner.

22. Mr. Flores and HRC, he testified, believe a focused deadline, with more non-facilitated practice, elicits better results. Not only does such an approach decrease maladaptive skills but it grows positive skills that can then be applied in a natural environment. PEERS offers this type of structure in its short-term training, SEEK does not.

23. Pablo Ibanez has been a Client Service Manager at HRC for the last 11 years. He holds bachelors and master's degrees in Psychology. His criticism of SEEK echoed that of Mr. Flores. Mr. Ibanez emphasized that HRC's current modality is a 'train the trainer' approach to building social skills; the "trainer" being the parent or the caregiver. His criticism resonated because SEEK's progress reports set no goals for claimant's parents beyond attendance and participation in the weekly classes.

24. Mr. Ibanez's main criticism of SEEK is its long-term, narrow focus. Based on the parent's reporting in the SEEK progress reports, he believed SEEK's progress was slow. He believed PEERS would provide a more effective model for claimant specifically and in general. Besides PEERS, he was also looking to add more vendors to better meet his clients' needs.

25. Although SEEK is not in HRC's catchment area, Mr. Ibanez denied that the extra cost of SEEK services or extra paperwork was part of his reason for wanting to discontinue SEEK's services with the claimant. He testified HRC funded it for nearly three years because claimant's family liked it.

26. Claimant had two witnesses testify: Aline Zaragoza, claimant's social skills teacher at SEEK, and claimant's mother. Both witnesses testified regarding the effectiveness of SEEK's training approach.

27. Ms. Zaragoza, who holds a master's degree in counseling and Applied Behavior Analysis, has been claimant's trainer at SEEK for the past six to eight months. She testified that claimant is appropriate for SEEK social skills training. She stated claimant's ultimate goal was to be able to generalize social skills across settings at various ages. She said that she would need another six months to see how claimant is progressing and depending how he responds, she would then have a better idea when his ultimate goals might be achievable. Analogizing to herself and nervousness she faces in social situations, she stated that stress in social situations is a long-term issue. Therefore, in her opinion, having a 14-week social skills goal, as PEERS uses, was unrealistic: One must practice to maintain. She stated that SEEK training maintains new social skills by taking the group out in the community to apply their skills. Ms. Zaragoza was convincing but unlike HRC's witnesses, she had no knowledge of PEERS' focused, short-term approach. Thus, her testimony was not accorded very much weight because she could not speak to whether HRC is justified in suspending SEEK's funding in favor of PEERS or another provider more aligned with HRC's social skills training philosophy.

28. Ms. Zaragoza stated that she used PEERS' lesson plans but that she was otherwise unfamiliar with their program.

29. Claimant's mother testified that she had not had the opportunity until just prior to the hearing to review the SEEK progress reports. But she did not put too much stock in them because she has personally observed claimant's progress during the time he has been receiving SEEK social skills training. She stated that SEEK's Saturday morning sessions are minimally disruptive to their family life and significantly, minimally disruptive to claimant's school work. Having claimant lose his status in the honors program is a concern for the family. She and her husband are concerned about changing claimant's schedule because it could hurt his grades and, because of his autism, he reacts poorly to changes in routine. Although claimant's mother was convincing in arguing SEEK training helped her son, like Ms. Zaragoza, she had no specific knowledge of HRC's proposed alternate training approach.

30. Claimant's mother is happy with the progress claimant is making with SEEK and because the schedule works for the family, she has had no reason to investigate the PEERS program.

LEGAL CONCLUSIONS

1. Pursuant to the Lanterman Act (Welf. & Inst. Code,³ § 4500 et seq.), California has accepted responsibility for persons with developmental disabilities⁴ and that an "array of services and supports should be established which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each state of life and to support their integration into the mainstream life of the community." (§ 4501.)

2. As set forth in Factual Finding 1, because of claimant's ASD, the Lanterman Act governs this case. An administrative "fair hearing" to determine the rights and obligations of the parties is available under the Lanterman Act. (§§ 4700-4716.) As set forth in Factual Finding 7, claimant requested a fair hearing to appeal HRC's decision to terminate funding claimant's SEEK social skills training. Jurisdiction in this case was therefore established.

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3. 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.) Here, HRC bears the burden of proving, by a preponderance of the

³ Unless otherwise indicated, all subsequent statutory references are to the Welfare and Institutions Code.

⁴ ASD is among the five categories of developmental disabilities that fall within the purview of the Lanterman Act (§ 4512, subd. (a).)

evidence, that it is entitled to discontinue funding of claimant's SEEK social skills training. (Evid. Code, § 115.) As discussed below, HRC has met its burden.

4. Section 4646 provides, in part:

(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. (Italics added.)

5. Section 4646.5 provides, in part, that the planning process for the IPP shall include:

(a) (2) A statement of goals, based on the needs, preferences, and life choices of the individual with developmental disabilities, and a statement of specific, *time-limited objectives* for implementing the person's goals and addressing his or her needs. These objectives shall be stated in *terms that allow measurement of progress or monitoring of service delivery*. These goals and objectives should maximize opportunities for the consumer to develop relationships, be part of community life in the areas of community participation, housing, work, school, and leisure, increase control over his or her life, acquire increasingly positive roles in community life, and develop competencies to help accomplish these goals. [¶] . . . [¶]

(b) For all active cases, individual program plans *shall be reviewed and modified* by the planning team, through the process described in Section

4646, as necessary, *in response to the person's achievement or changing needs...* (Italics added.)

6. Section 4647, subdivision (a), provides:

(a) Pursuant to Section 4640.7, service coordination shall include those activities necessary to implement an individual program plan, including, but not limited to, participation in the individual program plan process; assurance that the planning team considers all appropriate options for meeting each individual program plan objective; securing, through purchasing or by obtaining from generic agencies or other resources, services and supports specified in the person's individual program plan; coordination of service and support programs; collection and dissemination of information; *and monitoring implementation of the plan to ascertain that objectives have been fulfilled and to assist in revising the plan as necessary.* (Italics added.)

7. As set forth in Factual Findings 7 through 18 and 21 through 24, claimant's social skills goals, as memorialized in SEEK's progress reports, have not shown tangible progress. For example, on claimant's initial assessment, he was lacking in two areas: introducing himself independently and inviting others to join in activities. Nearly three years later, his goals were to identify when he needs help, appropriately approach others when he needs help and initiate and maintain a conversation with peers. Here, claimant's IPP goal was to continue to develop his social skills. (Factual Finding 6.) But claimant's latest goals are the same or derivative of his May 2015 initial goals. Goals should be time-limited in terms that allow measurement of progress or monitoring of service delivery. (Legal Conclusion 5.) By SEEK's own reporting, claimant's goals are not.

8. As set forth in Factual Finding 27 through 29, claimant was unable to rebut HRC's concerns regarding SEEK's lack of documented progress and protracted training time horizon. If anything, Ms. Zaragoza's testimony, that at least another six months of evaluation was needed before she could opine on when his ultimate goals might be achievable, corroborated HRC's concern.

9. Cause exists for HRC to discontinue funding for SEEK social skills training because, as set forth in Legal Conclusions 4, 5 and 7, HRC is statutorily-mandated to work with claimant's family to find measurable, time-limited training to assist claimant in meeting his social skills IPP goal. After nearly three years, SEEK has not demonstrated its social skills training program, as it is applied to claimant, is measurable or time-limited. (Factual Findings 7 through 18, 21 through 24.)

10. As set forth in Factual Findings 29, claimant's parents are concerned that any change in claimant's social skills training will be difficult for the family if it convenes other than the Saturday timeframe currently scheduled with SEEK. The concern is that this would also negatively affect claimant's schoolwork. Claimant's parents' needs and preferences should be considered in fashioning services and supports to meet claimant's IPP goal of improving his social skills. (Legal Conclusion 4.)

ORDER

Claimant's appeal is denied.

HRC may suspend funding for claimant's SEEK social services skills training at this time.

If applicable, claimant's new source of social skills training will be identified in claimant's IPP and will be reviewed yearly to ensure its continued application is consistent with claimant's progress toward his IPP goals and objectives, consistent with the directives of the Lanterman Act.

DATED:

JAMES MICHAEL DAVIS
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.