

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

NORTH LOS ANGELES COUNTY REGIONAL
CENTER,

Service Agency.

OAH No. 2018060240

DECISION

The hearing in the above-captioned matter was held on September 18, 2018, before Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings.

The Service Agency, North Los Angeles County Regional Center (NLACRC or Service Agency) was represented by Stella Dorian, Contract Officer. Claimant did not appear, and was represented by his mother (Mother).¹ Bernadette Buckley served as interpreter to assist Mother.

Evidence was received, the case argued, and the matter submitted for decision on the hearing date. After the recording equipment was shut down, Mother offered two exhibits, and the Service Agency had no objection to them. Thus, a school progress report was received as exhibit A, and a doctor's note was received as exhibit B.

The ALJ hereby makes his factual findings, legal conclusions, and orders, as follows:

¹ Initials and titles are used in place of proper names to protect the Claimant's privacy.

ISSUE PRESENTED

Should the Service Agency continue to provide reimbursement to Mother for afterschool programs and activities provided to Claimant as extended day services?

FACTUAL FINDINGS

THE PARTIES, PROCEDURAL HISTORY, AND JURISDICTION

1. Claimant is an 11-year-old boy who lives in the Service Agency's catchment area with his mother, younger sister, and Mother's extended family, including Claimant's grandparents, aunt and uncle, and his cousin. Claimant is eligible to receive services from the Service Agency pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act), California Welfare and Institutions Code, section 4500 et seq.,² because he suffers from Autism Spectrum Disorder.³

2. For most of his life, Claimant was within the catchment area of the Frank D. Lanterman Regional Center (FDLRC), receiving services from that entity. He and his family were then living in Burbank. In early 2018, they were forced to move from Burbank to a home within the Service Agency's catchment area. The Service Agency received Claimant's case from FDLRC, accepting the case effective March 2, 2018. (Ex. 21, p. 1.)

3. At the time that the Service Agency received his case, Claimant's Individual Program Plan (IPP) provided respite care for Mother, and it provided reimbursement to

² All statutory references are to the Welfare and Institutions Code, unless otherwise noted.

³ Claimant's diagnosis upon entry into the system was Autism, as then defined in the Diagnostic and Statistical Manual IV, (Text Revision). Since then, the diagnostic criteria have changed, and Autism Spectrum Disorder, or ASD, has superseded Autism.

Mother for extended day services, in the amount of \$625 per month. (E.g., ex 15, p. 2; ex. 18, p. 4; ex. 19.) FDLRC had agreed to reimburse for the extended day program through March 31, 2018, as an exception to policy. Over the course of his association with FDLRC, Claimant had received other services from that agency, such as social skills services in 2015. (Ex. 13.)

4. Mother and Service Agency staff met in early April 2018 to review the matter. Mother disclosed that she was then paying for, and being reimbursed for, Kumon tutoring, Fast-Forward reading class, and piano lessons. The Service Agency informed Mother, by a letter and Notice of Proposed Action (NOPA) dated May 9, 2018, that it would continue to fund respite care, but would not provide funding for the extended day program, as reimbursement or going forward. Service Agency's stated reasons were that the services were educational in nature and not specialized to address Claimant's developmental disabilities. It was further asserted that Mother would not agree to further assessment or planning. (Ex. 1, pp. 12-13.) Mother filed a Fair Hearing Request which was received by the Service Agency on May 25, 2018, and this proceeding ensued.

SERVICES RECEIVED BY CLAIMANT

5. (A) Claimant receives special education services from his local public school district, pursuant to an Individualized Education Program (IEP), based on a diagnosis of autism. The most recent IEP was generated after a meeting in April 2018. (Ex. 22.)

(B) According to the most recent IEP, Claimant was receiving, as related services, adaptive physical education (PE), occupational therapy (OT), and Language and Speech (LAS) services. (Ex. 22, p. 7.)

(C) According to the IEP, Claimant has a mix of strengths and weaknesses. For example, he can read at a speed above the average rate (144 words per minute vs. 128), but he is below grade level for fluency. (Ex. 22, p. 3.) While he usually follows rules, he has

trouble staying focused. (*Id.*, p. 4.) His voice, articulation, and fluency skills are within age-appropriate limits, and his speech is intelligible, but he has difficulty initiating and maintaining conversations with peers and with taking turns appropriately. (*Id.* p. 7.)

6. According to Mother, she has been using the funding that was provided by FDLRC for extended day services to send Claimant to Kumon for math tutoring and Fast Forward, a tutoring program that is focused on reading. She also provides him with piano lessons. Mother pays her brother to provide some of the piano lessons, and others are obtained in a community center. Just how much of the reimbursement money is allocated to each of the three programs is not disclosed by the record.

7. Claimant receives In Home Supportive Services (IHSS), 80 hours per month. Mother is the IHSS worker. (Ex. 21, p. 3.)

8. According to Ms. Yap, a manager at the Service Agency, the reimbursement program began at FDLRC when Claimant was exiting the Early Start program and becoming a consumer under the Lanterman Act. The records generated while Claimant was receiving services from FDLRC show that FDLRC was paying, by parent reimbursement, \$489 per month so that Claimant could attend an afternoon program at a Montessori school. (Ex. 3.) It is noted on exhibit 3—an IPP amendment—that the afternoon program was being provided as an exception to FDLRC service standards. Other programming was later added, including an afterschool program at a Catholic school near Claimant’s home. According to Mother, much of the activity there was sports activities, such as soccer. Later, Claimant “aged out” of the Montessori program. It appears Mother cobbled together the current program, and that FDLRC continued to reimburse her for her expenditures, for a period of years, with knowledge of what she was spending the money for. (See ex. 9, p. 3.)

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OTHER MATTERS

9. Mother asserts that all three programs provide benefits, and not just educational ones. Claimant's participation requires him to focus, and it assists his processing, and helps manage his behaviors. (Ex. 21, pp. 3, 8.) Plainly, the activities have the added benefit of keeping him occupied in the afternoons, with the opportunity to interact with others.

10. The Service Agency asserted that Mother had not wanted Claimant to undergo further assessment, and documented such a position in the chart notes. (See ex. 21, p. 8.) According to the notes, Mother did not want IPP planning as she wanted the existing program to continue. At hearing, Mother indicated she does not oppose assessment in the future.

11. The meeting that occurred on April 5, 2018 is not clearly denominated as an IPP meeting; the chart note refers to "contact" with mother. (Ex. 21, p. 3.) No IPP agreement was reached at that time. An "Annual Review of IPP" was held on August 23, 2018, after the NOPA and Fair Hearing Request were issued and filed. (Factual Finding 4; ex.'s 25, 25A.)

LEGAL CONCLUSIONS

JURISDICTION

1. Jurisdiction was established to proceed in this matter, pursuant to section 4710 et seq., based on Factual Findings 1 through 4.

GENERAL RULES APPLICABLE TO RESOLVING SERVICE DISPUTES:

2. Under the Lanterman Act, the State of California accepts responsibility for persons with developmental disabilities. 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.) These services and supports are provided by the state’s regional centers. (§ 4620, subd. (a).)

3. The California Legislature enacted the Lanterman Act “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; hereafter, *ARC v. DDS*.)

4. Services provided under the Lanterman Act are to be provided in conformity with the IPP, per section 4646, subdivision (d). Consumer choice is to play a part in the construction of the IPP. Where the parties cannot agree on the terms and conditions of the IPP, a Fair Hearing decision may, in essence, establish such terms. (See § 4710.5, subd.(a).)

5. Regional centers must develop and implement IPP’s, which shall identify services and supports “on the basis of the needs and preferences of the consumer, or where appropriate, the consumer’s family, and shall include consideration of . . . the cost-effectiveness of each option” (§ 4512, subd. (b); see also §§ 4646, 4646.5, 4647, and 4648.) The Lanterman Act assigns a priority to services that will maximize the consumer’s participation in the community. (§§ 4646.5, subd. (a)(2); 4648, subd. (a)(1), (2).)

6. In order to determine how an individual consumer is to be served, regional centers are directed to conduct a planning process that results in an IPP designed to promote as normal a life as possible. (§ 4646; *ARC v. DDS, supra*, 38 Cal.3d at 389.) Among other things, the IPP must set forth goals and objectives for the client, contain provisions for the acquisition of services (which must be provided based upon the client’s

developmental needs), contain a statement of time-limited objectives for improving the client's situation, and reflect the client's particular desires and preferences. (§§ 4646; 4646.5, subd. (a)(1), (2) and (4); 4512, subd. (b); and 4648, subd. (a)(6)(E).)

7. Section 4512, subdivision (b), of the Lanterman Act states in part:

"Services and supports for persons with developmental disabilities" means specialized services and supports or special adaptations of generic services and support 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. . . .

The determination of which services and supports are necessary shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of . . . the consumer's family, and shall include consideration of . . . the effectiveness of each option of meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. Services and supports listed in the individual program plan may include, but are not limited to, diagnosis, evaluation, treatment, personal care, day care, . . . physical, occupational, and speech therapy, . . . education, . . . behavior training and behavior modification programs, . . . respite, . . . social skills training, . . . transportation services necessary to ensure

delivery of services to persons with developmental disabilities. (Emphasis added.)

8. Services provided must be cost effective (§ 4512, subd. (b)), and the Lanterman Act requires the regional centers to control costs so far as possible, and to otherwise conserve resources that must be shared by many consumers. (See, e.g., §§ 4640.7, subd. (b), 4651, subd. (a), 4659, and 4697.) To be sure, the obligations to other consumers are not controlling in the decision-making process, but a fair reading of the law is that a regional center is not required to meet a disabled person's every possible need or desire, in part because it is obligated to meet the needs of many children and families.

9. The IPP is to be prepared jointly by the planning team, and any services purchased or otherwise obtained by agreement between the regional center representative and the consumer or his or her parents or guardian. (§ 4646, subd. (d).) The planning team, which is to determine the content of the IPP and the services to be utilized, is made up of the disabled individual or their parents, guardian or representative, one or more regional center representatives, including the designated service coordinator, and any person, including service providers, invited by the consumer. (§ 4512, subd. (j).)

10. Pursuant to section 4646, subdivision (a), the planning process is to take into account the needs and preferences of the consumer and his or her family, "where appropriate." Further, services and supports are to assist disabled consumers in "achieving the greatest amount of self-sufficiency possible" In the planning process, the planning team is to give the highest preference to services and supports that will enable a minor to live with his or her family, and an adult person with developmental disabilities to live as independently in the community as possible. Planning is to have a general goal of allowing all consumers to interact with persons without disabilities in positive and meaningful ways. (§ 4648, subd. (a)(1).)

11. The planning process includes the gathering of information about the

consumer and “conducting assessments to determine the life goals, capabilities and strengths, preferences, barriers, and concerns or problems of the person with developmental disabilities. . . . Assessments shall be conducted by qualified individuals Information shall be taken from the consumer, his or her parents and other family members, his or her friends, advocates, providers of services and supports, and other agencies.” (§ 4646.5, subd. (a)(1).) Given that services must be cost effective and designed to meet the consumer’s needs, it is plain that assessments must be made so that services can be properly provided in a cost-efficient manner.

12. The services to be provided to any consumer must be individually suited to meet the unique needs of the individual client in question, and within the bounds of the law each consumer’s particular needs must be met. (See, e.g., §§ 4500.5, subd. (d), 4501, 4502, 4502.1, 4512, subd. (b), 4640.7, subd. (a), 4646, subds. (a) & (b), 4648, subd. (a)(1) & (a)(2).) The Lanterman Act assigns a priority to services that will maximize the consumer’s participation in the community. (§§ 4646.5, subd. (a)(2); 4648, subd. (a)(1) & (a)(2).) Under section 4640.7, each regional center is to assist consumers and families with services and supports that “maximize opportunities and choices for living, working, learning, and recreating in the community.”

13. Reliance on a fixed policy “is inconsistent with the Act’s stated purpose of providing services ‘sufficiently complete to meet the needs of each person with developmental disabilities.’ (§ 4501.)” (*Williams v. Macomber* (1990) 226 Cal.App.3d 225, 232-233.) The services to be provided to each consumer will be selected on an individual basis. (*ARC v. DDS, supra*, 38 Cal.3d at 388.)

14. One important mandate included within the statutory scheme is the flexibility necessary to meet unusual or unique circumstances, which is expressed in many different ways in the Lanterman Act. Regional centers are encouraged to employ

innovative programs and techniques (§ 4630, subd. (b)); to find innovative and economical ways to achieve the goals in an IPP (§ 4651); and to utilize innovative service-delivery mechanisms (§§ 4685, subd. (c)(3), and 4791).

15. (A) Under section 4502, persons with developmental disabilities have certain rights, including the right to treatment services and supports in the least restrictive environment. Those services and supports should foster “the developmental potential of the person and be directed toward the achievement of the most independent, productive and normal lives possible.” (§ 4502, subd. (b)(1).) There is also a right to dignity, privacy and humane care. (*Id.* at subd. (b)(2).) The person also has the right to make choices, including where and with whom they live, and the pursuit of their personal future. (*Id.*, at subd. (b)(10).)

(B) The Act favors supporting minor children in their family home. When it comes to adults, the Legislature has placed “a high priority on providing opportunities for adults with developmental disabilities, regardless of the degree of disability, to live in homes that they own or lease with support available as often and for as long as it is needed, when that is the preferred objective in the individual program plan.” (§ 4689.)

16. Section 4648, subdivision (a)(3), provides that a regional center may purchase services pursuant to vendorization or contract. Subdivision (a)(3)(A) provides that vendorization or contracting is the process of identifying, selecting, or utilizing vendors or contractors, based on qualifications and other factors. The Department of Developmental Services has enacted regulations governing the establishment of persons or firms as vendors. (See California Code of Regulations (CCR), title 17, §54300, et. seq.)⁴ Other regulations control the purchase of services by contract. (CCR §§ 50607 through 50611.) All of these provisions plainly exist to not only control costs, but to assure the quality of

⁴ Further citations to the CCR shall be to title 17.

services.

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RULES APPLICABLE TO THIS MATTER

17. Section 4643.5 provides, at subsection (c), that when a consumer transfers from one regional center to another, “the level and types of services and supports specified in the consumer’s [IPP] shall be authorized and secured, if available, pending the development of a new IPP for the consumer.” The statute goes on to provide that prior to approval of a new IPP, the regional center must provide alternative services and supports to best meet the IPP objectives in the least restrictive setting.

18. Although section 4512, subdivision (b), has long stated that the regional centers could provide education, that authority has long been delimited by the obligation to use “generic resources” to provide services, when available, and certainly the public schools are generic services. To the extent that section 4512, subdivision (b), allowed the regional center to provide education as the payor of last resort, or when necessary to supplement what the public schools provide, that authority was suspended by the legislature in 2009 by the enactment of section 4648.5. That statute provides, at subdivision (a)(3), that the regional centers may not provide educational services for children aged three to 17. The statute further provides, at subdivision (a)(2), that the regional centers could not provide social recreational activities unless vendored as community-based day programs.

19. The services that were being paid for by FDLRC have a decidedly educational aspect, though they were being paid for as an after school program. That they provide some other positive results is not sufficient to continue funding them.

20. Under section 4645.3, subdivision (c), cited in Legal Conclusion 17, the IPP

was valid when the Service Agency accepted the case on March 2, 2018, as the funding was provided as an exception to FDLRC policies. The Service Agency could not unilaterally declare it invalid, at least until an IPP meeting was held. That did not occur until August 23, 2018. However, the record indicates that the Fair Hearing Request was submitted more than 10 days after the NOPA issued (May 9 to May 25; see ex. 1, pp. 11-15.) Thus, this was not a case of "aid paid pending." (§ 4715.) Under the circumstances, Claimant was entitled to the extended day program through May 9, 2018. After that point, the service may be deemed terminated. Therefore, Claimant may have reimbursement for March and April 2018, and for the first nine days of May, 2018, upon Mother providing documentation of the type previously provided to FDLRC.

21. The parties should develop a plan of assessment for Claimant, so that the parties can have a better picture of his strengths and weaknesses, and thereby better determine if some of the many services described to Mother during the April 5, 2018 "contact" (and described in the chart note) could be brought to bear so that the goals of the Lanterman Act, described in Legal Conclusions 2 through 16, can be met.

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ORDER

Claimant's appeal is granted in part, and denied in part.

Claimant may obtain reimbursement up to \$625 per month for expenditures for his extended day services received in March and April 2018. He may receive reimbursement for such expenditures during the period May 1 through May 9, 2018. That reimbursement shall be paid by the Service Agency upon Claimant providing documentation of the expenses, that documentation being of the same type as previously accepted at Frank D. Lanterman Regional Center.

The service Agency shall not be obligated to reimburse for expenditures made after May 9, 2018.

DATE:

Joseph D. Montoya
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter, and both parties are bound by it. Either party may appeal this decision to a court of competent jurisdiction within ninety (90) days of this decision.