

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs

EASTERN LOS ANGELES REGIONAL CENTER,

Service Agency.

OAH No. 2018060881

DECISION

Jennifer M. Russell, Administrative Law Judge, Office of Administrative Hearings, heard this matter in Los Angeles, California on August 6, 2018. Jacob Romero, Fair Hearing/HIPAA Coordinator, represented Eastern Los Angeles Regional Center (ELARC or service agency). Mother represented Claimant.¹

Testimonial and documentary evidence was received, the case was argued, and the matter was submitted for decision at the conclusion of the hearing. The Administrative Law Judge makes the following Factual Findings, Legal Conclusions, and Order granting the Claimant's appeal.

ISSUES

1. Whether the service agency should retroactively fund Claimant's attendance at the July 29 through August 4, 2018 Gamaliel Leadership Training Conference in the

¹ Claimant and Mother are not identified by their names to preserve confidentiality. Mother received Spanish language interpretation services.

amount of \$700?

2. Whether the service agency should retroactively fund Mother's attendance at the July 29 through August 4, 2018 Gamaliel Leadership Training Conference in the amount of \$700?

FACTUAL FINDINGS

1. Claimant is a 25-year-old consumer of ELARC based on his qualifying diagnosis of Autism Spectrum Disorder. He is a college graduate currently residing with his mother and sibling. He is enrolled in a community college where he is taking classes to prepare him in his pursuit of a graduate degree. He is actively involved with organizations serving the community of individuals with disabilities, including the service agency's board of directors and the USC Center for Excellence in Developmental Disabilities (UCEDD). He has part-time employment fulfilling clerical duties including filing and data entry.

2. Claimant's most current Individual Program Plan (IPP), dated August 29, 2017, among other things, provides that Claimant "continues to need help in his social and receptive communication. He expressed interest in developing his socialization skills." (Exh. 3 at p. 5.) ELARC funds 18 hours per month of community integration training (CIT) services for Claimant through Designated Exceptional Services for Independence (DESI) to develop his social skills. A December 19, 2017 CIT Progress Report prepared by DESI for the July 2017 through December 2017 period reports the following pertinent information regarding Claimant's progress:

[Claimant] continues his training with being social. He has participated in a Breast Cancer Awareness walk in October 2017 and enjoyed his outing very much. He met and talked to people who participated due to being a breast cancer survivor or being relatives of people with breast cancer.

[Claimant] chose this event and planned how to work for this day. He needed help with getting to the venue, checking in and then making sure to make it home back safely after a long day. He continues to enjoy meet ups and used his training to coordinate a meet up with other DESI client (sic) and Educators for the East Los Angeles Christmas Parade. He has chosen to work on this goal so much in the next six months because he will be continuing to go to school . . . and work on job training skills and vehicle maintenance.

[¶] . . . [¶]

Due to his internship opportunity in the past, [Claimant] has been able to engage in further socialization at an increased rate. [Claimant] is able to get along with his coworkers in a professional context, but feels somewhat repelled from further engagement due to the fact that he does not relate to many of their personal interests. His Educator has encouraged him to persist in this area, by suggesting he “go deeper” with them and really try to understand why they are passionate about these topics. [Claimant] is receptive to empathetic listening techniques, and has begun to employ them with the assistance of his Educator. His Educator has also encourages (sic) him to further develop his own interests, since he reports that he “has none.”

In addition to this, [Claimant] continues to train on his functional social skills while he sits on the Board of Directors

Committee at ELARC. He is usually quiet and can at times speak only when spoken to and not elaborate on too many pleasantries. (Exh. 8 at pp. 3-4.)

3. Claimant's IPP additionally provides that Claimant "continues to work on his independence. However, he still needs a few reminders to do chores and complete his personal hygiene tasks thoroughly but he has improved a lot." (Exh. 3 at p. 4.) ELARC funds eight hours per month of adaptive skills training (AST) services for Claimant through Future Transitions, Inc. to foster his complete independence in all areas of living. A December 4, 2017 Progress Report for Adaptive Skills Training prepared by Future Transitions states, "This Educator was not able to work with [Claimant] in the area of social skills; the Regional Center did not approve the increase in training hours from 8 to 12 hours per month." (Exh. 7 at p. 1.) The Progress Report nonetheless states, "This Educator teaches [Claimant] social skills that are applicable in a job environment."

[Claimant] is taught how to gather priorities, give directions, ask questions, and offer help. He is taught most of these skills through role-play scenarios where he takes the place of the employee in several different situations. He is shown how to use a map if he becomes lost or a customer asks for directions. He is shown how to ask for permission from his Supervisors and is also shown how to keep a positive attitude in the workplace. This is taught to him by quick and easy ways of controlling temper such as taking scheduled breaks and deep breaths. [Claimant] is shown how to get ready for interviews with importance on hygiene, grooming and wardrobe. He is shown how to dress so that he

impresses the interviewer, and that his face should be free of facial hair for the interview. He is learning how to create a budget for his paycheck and to save money in case he runs into unexpected finances. He is shown how to respond to workplace emergencies with haste through various role play situations where several different emergencies are covered. He is told who to call depending on the severity of the situation such as his Supervisor or the emergency number and is told to write the name of his Supervisor down in case he needs their permission or assistance in any situation. (Exh. 7 at p. 2.)

4. On May 15, 2018, Mother emailed Maria Colon, Claimant's service coordinator, requesting that ELARC fund her and Claimant's attendance at the Gamaliel Leadership Training Conference on July 29 through August 4, 2018. The conference fee is \$700 per person.

5. A flyer announcing the Gamaliel Leadership Training Conference states the following:

Gamaliel is an international organizing institute. It has been established to train leaders and organizers for the increasingly difficult task of building strong, stable and effective institutionally-based power organizations that can transform congregation and communities.

More than 44 locally-controlled organizations operating in urban, suburban and rural settings in 17 states.

Its methods are based upon the experiences and reflections of men and women who have worked in this field for decades.

Topics covered during training include:

- Institutional organizing
- Using the tools of community organizing to develop strong congregations and other community-based institutions
- Methodology for building power
- Tools to make and sustain relationships
- Self-interest, the public arena medium of exchange
- Power analysis: understanding the “laws of the jungle”
- Building support with money and media
- The elements of good meetings
- Elements of power organization
- Structuring personal and organizational time
- Strategic planning
- Political and economic analysis
- Knowledgeable and Experienced Leaders

Gamaliel has brought together people from its staff, consultants, board and affiliate organizations who are knowledgeable and experienced in community organizing as trainers.

Participants include clergy and lay leaders, as well as leaders from community organizations, unions and other community based institutions from across the country. (Exh. 4.)

6. Mother informed Ms. Colon that she attended the conference last year and stated her belief that "it will benefit and make a difference in my son's life." (Exh. 6.) Ms. Colon responded stating, "I believe this is the same conference that was requested last year. The event you are requesting through Gamaliel is actually a training to train leaders who work in advocacy, community organizing, etc. therefore, ELARC is not able to fund the training you are requesting. ELARC is only able to fund up to two conferences per fiscal year that cover disability related topics. Please let me know if you would like me to send you a notice of action and if you have any questions." (Exh. 6.)

7. Mother replied to Ms. Colon affirming that it was the same conference she attended the previous year and that the conference was about self-advocacy. Mother requested Ms. Colon to provide her with a Notice of Proposed Action (NOPA).

8. A May 21, 2018 NOPA informs Claimant and Mother that ELARC denied their request for funding for their attendance at the Gamaliel conference. The stated reason for ELARC's action is: "Gamaliel National Leadership training is not related to [Claimant's] disability nor is it a cost effective use of public funds." (Exh. 1.) The May 21, 2018 NOPA references Welfare and Institution Code sections 4646; 4646.4, subdivision (a); 4648, subdivision (a) (1) and (2); 4512, subdivision (b); and 4620.3, subdivision (a), as authority for the action.

9. On behalf of Claimant, Mother maintained in a June 4, 2018 correspondence to the service agency that the Gamaliel conference "will make a difference in their (*sic*) social skills, organization skills, strategic planning and much more. All this (*sic*) areas are written on his IPP as an area of needs; even if he is out of school his IEP also documented the deficit on organization and social skills. This week is designed to empower everyone and even if my son has autism he will benefit greatly from this week of workshops." (Exh. 5.) Mother additionally maintained that she also benefits: "I also need leadership ideas in order to deal with a lot of people working with my children and for my personal growth."

(Ibid.) Mother attended the conference the previous year when it was conducted in English. Portions of the conference were expected to be conducted in Spanish, and Mother therefore anticipated gaining a better and more meaningful understanding of the subject matters the conference addresses.

10. On June 4, 2018, Claimant and Mother requested a fair hearing.

11. On June 14, 2018, an informal meeting with Claimant, Mother and relevant service agency personnel in attendance occurred. Mother identified the following "points" the Gamaliel conference offers, and which she believes Claimant "needs to experience":

- Tools to make and sustain relationships.
- Self-Interest, the public arena.
- The elements of Power organizations.
- Structure personal and organizational time.
- Strategic Planning.

(Exh. 5.)

12. In a June 14, 2018 letter memorializing the informal conference, the service agency contends that the AST and CIT services it funds for Claimant already address Claimant's socialization skills and vocational goal objectives and that it would be imprudent for it to fund Claimant and his Mother's attendance at the Gamaliel Leadership Training Conference.

The Future Transitions AST progress report for December 2017 implements goals that focus on vocational skills, primarily how to look and apply for jobs of interest, how to update one's resume and etiquette during interviews. In addition, [Future Transitions] indicates that it provides training and assistance in job related skills which includes, understanding directions, accepting criticism, asking for

permission, maintaining a positive attitude and taking responsibility. The DESI CIT progress report dated 12/19/17 addresses objectives related to community safety, community connecting, social skills and employability skills. . . . The community connecting objective notes that the client socializes very little outside of family, so the service helps him explore social opportunities and options by looking into shared interest groups and digital and community resources. DESI also has a social skills objective which notes that [Claimant] has attempted to relate with co-works (sic), only to find that he has little common interest with them. As a result, DESI is teaching [Claimant] how to engage in 'small talk' while delving deeper into people's interest so he can learn more about how to relate to others. The objective also endeavors to help [Claimant] understand the connection between social communication and personal, family and romantic relationships. . . .

During this meeting, [Mother] emphasized that social skills remains as one of [Claimant's] most challenging issues and that he should go to the Gamaliel conference to address those needs in a vocational/professional setting. However, ELARC is funding for AST and CIT, a total of 26 hours per month with both services that includes training on social etiquette in the work place and community. Furthermore, [Claimant] stated that the Gamaliel conference would help him find his occupational niche so he could move forward

with career advancement, yet AST and CIT services have implemented objectives that help him consider various career options and their prerequisites, with the DESI report noting that the claimant had initially wanted to be a teacher,^[2] but since working with the CIT vendor is leaning more towards a career in the clinical field as a pharmacy technician or occupational therapist. [¶]

In this case, it is not clear what the Gamaliel conference will do for [Claimant] that current services have been unable to this far. As a result, it does not appear that funding for this service would be cost effective because the regional center would be duplicating its (sic) effort by funding for an event that will attempt to address needs that DESI and [Future Transitions] have already been working with.[¶]

. . . It may not be prudent for the regional center to give the Gamaliel Conference the highest preference because ELARC already funds for the 2 services that address the needs the [Claimant] and his mother expressed. . . .

The Gamaliel conference most likely has merit, and considering [Claimant's] intelligence and accomplishments, he may benefit from attending. However, the question in this case is not about whether or not [Claimant] will benefit

² At the administrative hearing, the service agency corrected this notation to indicate that Claimant never expressed any interest in pursuing a teaching career.

from the Gamaliel conference, but whether or not it would be appropriate for ELARC to pay for the client and his mother to attend this 7 day event.

(Exh. 9 at pp. 4-6.)

13. In the June 14, 2018 letter memorializing the informal conference, the service agency additionally contends the training offered at the Gamaliel conference was inconsistent with Claimant's vocational aspirations but furthered Mother's vocational aspirations, to which it objected.

In this case, [Mother] indicated that because [Claimant] participates in the regional center board of directors in addition to USC UCEED that he needs the training to learn how to become a more effective member of these organization (sic). However, the Gamaliel training does not appear to be consistent with his vocational aspirations, and . . . [Claimant's] presence on these boards provides fertile ground for growing natural support in the community Those committees should benefit from his perspective on a variety of issues that regional center clients encounter. If he faces difficulty expressing his views, ELARC has CIT and AST in place, which can adjust their objectives and help him learn how to become a more viable member of these panels.

Overall, this training appears to be more appropriate for someone like [Mother], who is currently going through the process of vendoring her non-profit. . . . Indeed, Lanterman

Act section 4648(a)(2) . . . encourages the IPP team to “tailor” services specifically for the client and family. However, Lanterman Act mandates that regional centers link services to the client. In this case, the parent has vocational aspirations of becoming a regional center vendor. While the Lanterman Act speaks to vendorization requirements, the law does not require the regional center to train prospective vendors.

(Exh. 9 at p. 7.)

14. Claimant and Mother were unable to reach a resolution with the service agency at the informal meeting. Thereafter, these proceedings ensued.

15. At the administrative hearing, the service agency repeated its contention that the conference offered “nothing disability-related,” that it “benefit[s] [Mother] in her career,” and that it is not obligated to train a vendor. The service agency maintained that the AST and CIT services it funds for Claimant provides Claimant with the social skills he needs to connect with his community and with employment and job preparation skills that have allowed him to secure employment. On behalf of the service agency Ms. Colon testified that “these services are flexible and can be tweaked to meet [Claimant’s] needs.” According to Ms. Colon, ELARC is “open to possible increasing hours to meet his needs.”

16. Claimant’s testimony at the administrative hearing established that he benefitted from his attendance at the Gamaliel conference. He explained how he “learned something unique that [he] couldn’t get from DESI or Future Transitions.” He listed, “how to benefit from two-way relationships,” “self-advocacy and being my own representative,” and “organizing myself definitively.” He elaborated that the conference taught him “to stay on tract,” “how to get the most of a meeting,” and “how to get to the other side of the

conversation.” According to Claimant, attending the conference helped him to solidify his identity and to know what his interests are so that he is able to go into his community knowing to whom he relates in his community. He noted that the “conference will make a difference participating in meetings” and that he is helped with “thinking analytically” and with “critical reading through information.” Claimant asserted that DESI “doesn’t work with me on any of the points I learned from the conference.”

17. In closing argument at the administrative hearing, the service agency conceded that Claimant “has benefitted” from the conference.

18. Mother testified at the administrative hearing. Mother maintained, without objection from the service agency, that she is entitled to funds from the service agency to attend two conferences each year. Mother asserted her preference that the service agency funds the Gamaliel conference as one of her two yearly conferences. Mother noted, without rebuttal from the service agency, that other service agencies have funded the attendance of other parents of individuals with developmental disabilities.

19. No evidence offered at the administrative hearing rebutted Mother’s credible testimony that this year, because all or part of the conference was conducted in Spanish, she was better able to comprehend the subject matter of Gamaliel conference, and that she therefore benefit from her attendance.

20. No evidence regarding the cost of Claimant’s ELARC-funded AST and CIT services was offered at the administrative hearing.

LEGAL CONCLUSIONS

1. 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 of life in the community.” (Welf. & Inst. Code, § 4501.) Regional centers play a critical role in the coordination and delivery of services and supports for persons with disabilities. (*Id.* at §

4620 et seq.) Regional centers are responsible for taking into account individual consumer needs and preferences, and for ensuring cost effectiveness. (*Id.* at §§ 4646, 4646.5, 4647, and 4648.) To provide uniformity and consistency, regional centers are mandated to develop best practices for use when purchasing services and supports for consumers and families. (*Id.* at § 4620.3, subd. (a).)

2. The services and supports to be funded for a consumer are determined through the individualized program planning process, which involves collaboration with the consumer and service agency representatives. The planning process includes gathering information and conducting assessments. (*Id.* at § 4646.5, subd. (a).)

3. Services and supports for persons with developmental disabilities are defined as “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.” (*Id.* at § 4512, subd. (b).) Services and supports include “advocacy assistance, including self-advocacy training, facilitation, and peer advocates,” “community integration services,” as well as “social skills training.” (*Id.*)

4. As the party seeking funding for Lanterman Act services or supports, Claimant bears the burden of establishing entitlement to those services or supports by preponderance of the evidence. (Evid. Code, § 500.)³ Claimant has met his burden.

5. The service agency’s contention that the Gamaliel conference offers “nothing disability-related” is rejected. The Lanterman Act clearly establishes that generic services

³ Evidence Code section 500 provides that “a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting.”

and supports are adaptable to alleviate the effects of a developmental disability or for the social habilitation of an individual with a developmental disability in order to achieve and maintain an independent, productive normal life and full integration into the mainstream of life in the community. (See Legal Conclusions 1 and 3.) The Gamaliel conference is such an adaptable generic support.

6. It is undisputed that Claimant presents with Autism Spectrum Disorder and that, as is characteristic of individuals with that developmental disability, Claimant presents with persistent deficits in social communication and social interaction across multiple contexts. The service agency funds AST and CIT services to address these deficits, but, as is evident in the progress reports offered at the administrative hearing, Claimant's habilitation is either on-going or has been met with limited success with these two services. (Factual Findings¹ through 3.) By contrast, Claimant reports, and the service agency concedes, that Claimant benefited from his attendance at the Gamaliel conference. Claimant reported on his receipt of assistance with self-advocacy training, social skills training, and services facilitating his integration in the community. (Factual Findings 16 and 17.) Importantly, Claimant benefited from the immersive, real time social interaction with other conference attendees, as opposed to a contrived simulation. Experience is the best teacher. In the absence of evidence of the costs associated with Claimant's ELARC-funded AST and CIT services (Legal Conclusion 20), it is not established that the service agency's funding of Claimant's attendance at the Gamaliel conference is cost ineffective or contrary to best practices. (Legal Conclusion 1.)

7. Mother's credible testimony regarding how she benefitted from her attendance at the Gamaliel conference because it was conducted in Spanish is undisputed. The fact that her attendance at the conference may also further her aspirations of becoming a vendor servicing the community of developmentally disabled individuals is irrelevant. It is not uncommon for family members of individuals with developmental

disabilities to pursue a vocation borne out of their experience caring and advocating for a child or other relative.

8. By reason of Factual Findings 1 through 20 and Legal Conclusions 1 through 7, cause exists to grant Claimant's appeal.

ORDER

1. Claimant's appeal is granted.

2. Eastern Los Angeles Regional Center shall retroactively fund the cost of Claimant's attendance at the July 29 through August 4, 2018 Gamaliel Leadership Training conference in an amount totaling \$700.

3. Eastern Los Angeles Regional Center shall retroactively fund the cost of Mother's attendance at the July 29 through August 4, 2018 Gamaliel Leadership Training conference in an amount totaling \$700.

DATED:

JENNIFER M. RUSSELL
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is a final administrative decision. This decision binds both parties. Either party may appeal this decision to a court of competent jurisdiction within 90 days.