

**BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA**

**In the Matter of:**

**CLAIMANT,**

**vs.**

**KERN REGIONAL CENTER,**

**Service Agency.**

**OAH No. 2019110414**

**DECISION**

Nana Chin, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on December 23, 2019, in Tehachapi, California.

Claimant<sup>1</sup> was represented by his mother (Mother) during the proceedings. Claimant did not attend the proceedings.

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<sup>1</sup> Names are omitted and family titles are used throughout this Decision to protect the privacy of Claimant and his family.

Ana Leheny, Program Manager (PM), represented Kern Regional Center (KRC or Service Agency).

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on December 23, 2019.

## **ISSUE**

Whether the Service Agency should fund Claimant's parent's participation in the Dynamic Nutrition Specialist Course.

## **EVIDENCE**

Documentary: Exhibits 1 through 8 and A

Testimonial: PM Leheny, Mother, and Gemi Bertran-Lant, Chief Executive Officer (CEO)/Founder of Nourish the Brain Institute

## FACTUAL FINDINGS

### Background

1. Claimant is a consumer who is eligible for services under the Lanterman Developmental Disabilities Services Act (Lanterman Act; Welf. & Inst. <sup>2</sup> Code, § 4500 et seq.) based upon a qualifying diagnoses of mild intellectual disability (ID).

2. Claimant is 10 years old and has been diagnosed with Down Syndrome. Claimant resides in the family home with both of his parents and two siblings. He attends a combination of special education and general education classes in public school that is part of the Southern Kern Unified School District.

3. On July 9, 2019, a planning meeting was held with Claimant, Mother and Claimant's KRC Service Coordinator, Veronica Contreras. During the meeting, Claimant's 2019 Individual Program Plan (IPP) was prepared. The IPP addressed Claimant's long term goals, his current status, and five desired "outcomes."

4. In the narrative related to Claimant's health, both his 2018 and 2019 IPP note that "[Claimant] is in generally good health, and sees his [primary care physician] as needed. He has not seen [*sic*] this year as there have been no health concerns to report." (Exhibit 3, p. 33 and 48.)

5. The desired "outcome" of the 2019 IPP was for Claimant to maintain "optimal health," and to be provided with regular physical and dental examinations and nutritional counseling as necessary. (Exhibit 3, p. 37.) Claimant's baseline health in

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<sup>2</sup> Undesignated statutory references are to the Welfare and Institutions Code.

2019 remained substantially unchanged from the prior year, as Claimant “is in generally good health and see his [primary care physician] as needed. He had no medical visits reported, as there are no concerns to note.” (*Id.*) Claimant’s health care was to be provided through Kaiser and Medi-Cal.

6. On October 16, 2019, an IPP addendum was issued. The addendum noted that Claimant had terminated services from Autism and Related Disorders Response Team<sup>3</sup> (ART) and was being referred to Future Transitions for adaptive skills training. It was also noted that Claimant had been approved for additional hours of respite during November, December and January due to his significant time off from school. There were no changes related to his health noted in the addendum.

### **Request for Dynamic Nutritional Specialist Course**

7. On September 13, 2019, Mother emailed SC Contreras requesting that Claimant’s ART vendor be changed and “requesting KRC vendorization of health courses for [Claimant].” (Exhibit 3, p. 60.)

8. Following this email, Claimant was seen at Kaiser Permanente on September 26, 2019. A blood test was performed, which revealed Claimant’s overall cholesterol to be 161 mg/dL and his low-density lipoproteins (LDL) cholesterol to be 106 mg/dL.<sup>4</sup> Before this test, Claimant had been tested on August 3, 2015, and had a

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<sup>3</sup> ART is vendorized to provide adaptive skills training to individuals with disabilities.

<sup>4</sup> For adults, LDL cholesterol levels that are less than 100 mg/dL is recommended. In children, the recommended LDL cholesterol is less than 110 mg/dL.

LDL cholesterol result of 85 mg/dL. There is no evidence that Claimant's primary care physician, Anupama Kumar, M.D., has diagnosed Claimant with high cholesterol or made any other recommendations to Mother regarding Claimant's health.

9. The following day, Mother emailed SC Contreras on "regarding her request for KRC funding of a course she would like to take for educational purposes regarding [Claimant's] diet and [diagnosis]." (Exhibit 3, p. 61.) SC Contreras responded the same day requesting additional information regarding the nutritional course.

10. On a date not established by the record, Mother forwarded SC Contreras an email, attaching a letter from Gemi Bertran-Lant, CEO of Nourish the Brain Institute.

11. This letter stated:

"Nourish the Brain Institute has created a program, Dynamic Nutrition Specialist to certify parents like [Mother] to help not only their families but also education other parents with the same kind of problems. Guiding and coaching parents to know how to address eating habits and behaviors will help them understand the importance of healthy routines for kids with Down Syndrome and Autism. This is the reason [Mother] is requesting financial aid to take the certification program."

(Exhibit 3, p. 66.)

12. On October 23, 2019, the Service Agency issued a Notice of Proposed Action, informing Claimant that they were denying Claimant's request for funding of

Dynamic Nutritional Specialist Course. Claimant filed a fair hearing request to appeal the Service Agency's decision.

13. On December 13, 2019, an informal meeting was held with PM Leheny. During the meeting, PM Leheny explained that the Service Agency would not be able to fund Mother's tuition to attend a higher education program for the following reasons: (1) there was no Welfare and Institutions Code provision or regulation that would permit funding; (2) Dynamic Nutrition Specialist program was considered experimental treatment as there is no evidence that better nutrition would ameliorate or improve Claimant's ID; and (3) it is the responsibility of the parents to provide the best nutrition for their child.

### **Dynamic Nutritional Specialist Course**

14. Ms. Betran-Lant testified at the hearing about the benefits of nutrition for a number of conditions, including leaky gut, which is a common condition in individuals with Down Syndrome.<sup>5</sup> In the past few months, five parents with children with special needs have successfully completed the program.

### **Testimony from Mother**

15. At the hearing, Mother explained that she wants to attend the Dynamic Nutritional Specialist Course because she believes Claimant eats too much which causes him to have other health issues, such as high cholesterol and thin nails.<sup>6</sup>

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<sup>5</sup> Claimant has not been diagnosed with leaky gut.

<sup>6</sup> Claimant was diagnosed with Nail Dystrophy on April 13, 2012.

Mother asserts that Claimant would benefit from obtaining the right nutrition and thereby improving his health.

16. Mother understands that the Service Agency considers the Dynamic Nutrition Specialist course to be experimental but she believes that the course has reversed her diabetes. According to Mother, she wants to take the course and teach Claimant and the people around her to have proper nutrition.

17. Following the informal meeting with the Service Agency on December 13, 2019, Mother requested a referral to a nutritionist. As of the date of the hearing, she has not yet received a response.

18. Mother is also aware that Kaiser has one-on-one wellness coaching classes for parents in addition to nutritional classes, but she has not attended these classes. Mother does not believe the Kaiser classes would be beneficial as she did not find a health class offered at Kaiser she previously attended to be helpful. Additionally, the Kaiser wellness and nutrition classes are not geared to children with special needs.

## **Articles**

19. Mother presented a number of articles in support of her request. The articles cover an array of topics including the importance of addressing weight problems in adults with Down Syndrome, diet-related issues which can affect individuals with Down Syndrome, and the medical costs associated with raising a child with Down Syndrome. Included among the articles was an article linking autism with food. Mother testified that she believes Claimant may be autistic and is going through the assessment process.

## LEGAL CONCLUSIONS

### Jurisdiction

1. Pursuant to section 4710.5, subdivision (a), "Any ... authorized representative of the applicant or recipient, who is dissatisfied with any decision or action of the service agency which he or she believes to be illegal, discriminatory, or not in the recipient's or applicant's best interests, shall ... be afforded an opportunity for a fair hearing." Claimant timely requested a hearing to appeal the Service Agency's decision to deny funding for Mother to attend the Dynamic Nutrition Specialist Course. Jurisdiction in this case is established. (Factual Findings 1, 9 and 12.)

### Standard and Burden of Proof

2. Where a change in services is sought, the party seeking the change has the burden of proving that a change in services is necessary. (See, Evid. Code, §§ 115 and 500.) The burden of proof is on the party seeking government benefits or services. (See, e.g., *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) In this case, Claimant bears the burden of proving, by a preponderance of the evidence, that he is entitled to funding for his mother's participation in the Dynamic Nutrition Specialist Course. Claimant has not met his burden.

### Applicable Law

3. In enacting the Lanterman Act, the Legislature accepted its responsibility to provide for the needs of developmentally disabled individuals and recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (§ 4501.)



4. Regional centers, such as KRC, play a critical role in the coordination and delivery of services and supports for persons with disabilities. The consumer's needs are determined through the IPP process. (§ 4646.) "Individual program plans shall be prepared jointly by the planning team. Decisions concerning the consumer's goals, objectives, and services and supports that will be included in the consumer's [IPP] and purchased by the regional center or obtained from generic agencies shall be made by agreement between the regional center representative and the consumer or, where appropriate, the parents, legal guardian, conservator, or authorized representative at the program plan meeting." (§4646, subd. (b).)

5. "Services and supports" 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, and normal lives include community integration services." (§ 4512, subd. (b)).

6. Provision of such services and supports, however, are subject to limitation. Regional centers are required to take into account parental responsibilities for providing similar services and supports to children without disabilities (§ 4646.4, subd.(a)(4), Cal. Code Regs., tit. 17, § 54326); to identify and pursue all possible sources of funding for its consumers and to secure services from generic sources where possible. (§ 4647, subd. (a)); and are prohibited from purchasing experimental treatments, which include experimental medical or nutritional therapy when the use of the product for that purpose is not a general physician practice, which have not been clinically determined or scientifically proven to be effective or safe or for which risks and complications are unknown. (§ 4648, subd. (a)(16).)

## **Discussion**

7. Mother asserts that the Dynamic Nutrition Specialist Course would be beneficial to Claimant in alleviating his health issues. As an initial matter, it was not established Claimant has any health issues. There was no need identified during Claimant's 2018 and 2019 IPP, which suggests Claimant has any health issues. Instead both his 2018 and 2019 IPP document Claimant to be in generally good health such that he did not require any doctor's visits. (Factual Findings 4 and 5.)

8. Whether the Dynamic Nutrition Specialist Course would be beneficial to Claimant is not the issue. The issue is whether Mother's attendance is needed to alleviate the conditions of the developmental disability that renders Claimant eligible for regional center services. Insufficient evidence was presented to establish that the course is not experimental or has been clinically or scientifically proven to be effective that would render it an appropriate service or support eligible for purchase by a regional center under the Lanterman Act.

## **ORDER**

Claimant's appeal is denied.

DATE:

NANA CHIN

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.