

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

In the Matter of:

CLAIMANT

v.

NORTH LOS ANGELES COUNTY REGIONAL CENTER,

Service Agency

OAH No. 2021020917

DECISION

Thomas Lucero, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter by videoconference on May 14, 2021.

Dana Lawrence, Fair Hearings and Administrative Procedures Manager, represented the Service Agency, the North Los Angeles County Regional Center. Mother represented claimant. The names of claimant and his family are omitted to protect their privacy.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on May 14, 2021.

STATEMENT OF THE CASE

Claimant seeks Service Agency funding for a suitable program to teach him digital or special effects skills that would qualify him for a career in the entertainment, and especially the motion picture, industry. One such program, Actors for Autism, denied his application. Later, he sought funding for another such program, Extraordinary Minds. In a September 2020 fair hearing on funding for that program, the decision was against claimant. Service Agency funding was not ordered. Claimant again seeks funding for Extraordinary Minds, having found no other suitable program available to him.

ISSUE

Whether the Service Agency should be ordered to fund claimant's tuition to attend courses at Extraordinary Minds notwithstanding an ALJ's previous decision that such funding is not required.

SUMMARY OF DECISION

Extraordinary Minds offers courses such as claimant prefers, suitable to his talents and interests, which he has cultivated for years. The Lanterman Act dictates that consumer's preferences should be honored whenever feasible. But claimant did not appeal the recent decision adverse to him that the Service Agency was not required to provide the funding he sought for Extraordinary Minds. At the hearing in this matter, there was no evidence of another such suitable and available program. The law makes

infeasible honoring claimant's preference in this instance. A fair hearing cannot be used in these circumstances in place of an appeal, to change an adverse decision.

FINDINGS OF FACT

1. Claimant is an adult, not in a conservatorship, eligible for services based on his diagnosis of autism spectrum disorder (ASD). He lives with his parents. He attends to his personal care independently and is able to function independently in other ways.

Procedural Background

2. The fair hearing in this case was preceded by another with arguably similar issues. In the previous case, claimant submitted to the Service Agency an April 2020 fair hearing request, Exhibit 5, which stated this reason for a hearing: "To request approval of funds for services to be provided for Exceptional Minds."

3. The September 2020 decision, Exhibit 10, in which an ALJ considered the April 2020 fair hearing request, stated that the issue was:

[W]hether the Service Agency should be required to fund claimant's enrollment at Exceptional Minds, a nonprofit organization offering individuals with autism educational courses and vocational training in digital animation and visual effects for film and television.

//

//

4. The ALJ's September 2020 decision, page 18, found that: "Cause was not shown to authorize funding under Welfare and Institutions Code section 4648, subdivision (a)(3), because the purchase of services at Exceptional Minds cannot be made pursuant to vendorization or contract."

5. The September 2020 decision concluded on page 19 with this order: "Claimant's appeal is denied. The Service Agency is not required to fund claimant's attendance at Exceptional Minds."

6. The September 2020 decision was issued on September 21, 2020 and included on page 19 this notice to the parties: "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."

7. There was no appeal to a court of competent jurisdiction from the September 2020 decision.

Current Fair Hearing Request

8. Claimant's fair hearing request to the Service Agency in this matter is dated February 21, 2021.

9. Claimant stated the reasons for the fair hearing in this matter in this way:

NLACRC has failed to offer appropriate services, suitable vocational programming for [claimant]. NLACRC has failed to have [claimant's] IPP to be implemented by a suitable program.

10. The fair hearing request stated that what was needed to resolve claimant's complaint in this matter was: "Impliment [*sic*] and fund suitable program according to [claimant's] IPP."

The IPP's

11. On page 1 of claimant's August 23, 2019 Individual Program Plan (IPP), Exhibit 2, claimant's strengths are described as: "very good artistic skills. He enjoys drawing, and has developed skills in the area of graphic design. [Claimant] has good computer skills." On what claimant hopes to achieve, the IPP continues on page 1 that claimant "wants to get a job as a graphic designer. [Claimant] says he wants to get an internship at a local movie studio." In Exhibit 3, a November 2019 Addendum to the IPP, there was agreement, as stated on page 1, that claimant would "participate in an internship at a Talent Agency, with support from Tierra Del Sol's NEXUS program." Beginning in January 2020, the Service Agency was to fund up to five days per week of participation.

12. Claimant's February 23, 2021 fair hearing request, Exhibit 1, states that the Service Agency has failed to offer claimant appropriate services, especially suitable vocational programming, failing to implement claimant's August 23, 2019 IPP by offering or funding a program suited to claimant's skills, interests, and abilities. The program on which claimant focused at the fair hearing is that provided by a local non-profit organization called Exceptional Minds.

13. In May 2014, claimant visited the professional training program at Exceptional Minds, which operates in the same city where claimant lives. At about the same time, claimant asked for and the Service Agency declined funding claimant's participation in the program. In March 2020, claimant asked again that the Service

Agency fund tuition and fees at Exceptional Minds, which distributes promotional and other materials, such as in Exhibits 15, 16, and G, that describe the organization as the only autism education organization that combines technical instruction in digital arts with behavioral training in the curriculum. In a March 17, 2020 letter, Exhibit 4, from claimant's previous Consumer Service Coordinator (CSC), Gabriel Harlan, the Service Agency declined to fund tuition at Exceptional Minds, primarily because the organization was not a Service Agency vendor.

14. From late 2019 through a June 1, 2020 email to Erin Broughton-Rodriguez, Exhibit 6, whose duties at the Service Agency include vendorization, Exceptional Minds advised that it intended to pursue vendorization, though following up on its intent had been delayed.

15. In June 2020, claimant and the Service Agency reached a Final Mediation Agreement, Exhibit 7, that provided, among other things, that the Service Agency would fund tuition and fees for claimant's attendance at a vocational training program at Actors for Autism. The agreement did not waive claimant's right to renew his request for funding attendance at Exceptional Minds.

16. Claimant applied to Actors for Autism Visual Effects Program, but in a July 23, 2020 letter, Exhibit 8, the program advised that its denial of claimant's application was "a reflection of . . . limited space and talented application pool."

17. In December 2019, claimant earned a certificate in Graphic Design, Exhibit C, from Los Angeles Valley College. In a series of August 2020 emails, Exhibit 9, CSC Harlan and mother discussed whether claimant might attend courses at Los Angeles Valley College for an Associate's degree in film, television, and electronic media, or whether claimant might attend college as well as Exceptional Minds courses.

18. As set out above, the fair hearing that proceeded on September 8, 2020, resulted in the September 2020 decision adverse to claimant.

19. Mother's evidence indicated that the September 2020 decision may not be applied generally because service agencies have in some cases contracted with Exceptional Minds to fund consumers' attendance.

20. Exceptional Minds is not currently a vendor to the Service Agency, but it may still apply to be a vendor. The conclusion that the Service Agency's purchase of services at Exceptional Minds cannot be made pursuant to vendorization may not be generally applicable in the future.

21. Claimant's October 15, 2020 IPP, Exhibit 11, notes on page 3 claimant's interest in Exceptional Minds, "which he believes would best prepare him to meet his vocational goals." The IPP also notes that funding for Exceptional Minds had been denied in part because it was not a vendor. The IPP continues on pages 10 and 11: "Team has made attempts at identifying an appropriate program for [claimant's] specific interests, however team has not had success in placing [claimant] in an ongoing program [Claimant] has been at home with no classes or programs to attend since January 2020."

22. With target dates in the two-year period ending August 2023, a February 2021 IPP Addendum, Exhibit 12, page 2, states that "[claimant] will develop the technical and work-readiness skills necessary to pursue a career in the fields of visual effects, motion graphics, and/or digital 3-D animation. In addition, [claimant] will work on improving his social skills while participating in a community integration program."

23. With a February 3, 2021 letter, Exhibit 13, Ms. Lawrence on the Service Agency's behalf responded to Mother's 4731 complaint, that is, a complaint under

Welfare and Institutions Code section 4731. The 4731 complaint has similarities to the issue in this fair hearing, in that mother claimed that the Service Agency was acting unfairly and violating claimant's rights by not offering claimant suitable vocational programming to continue his training and education, resulting in behavioral issues for claimant. Mother also claimed, among other things, that the decision against claimant following the September 8, 2020 fair hearing was the result of false testimony from Service Agency personnel. Ms. Lawrence's letter stated that the Service Agency and its personnel acted fairly toward claimant at all times and did not violate claimant's rights. However, as Welfare and Institutions Code section 4731 states, specific procedures are in place to resolve complaints under the statute. A fair hearing is not such a procedure and may not be used to resolve mother's 4731 complaint in this matter.

PRINCIPLES OF LAW

1. The party asserting a claim generally has the burden of proof in administrative proceedings. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 160-161 ["the burden of proving . . . [disputed] conditions is on the petitioner".]) Under Evidence Code sections 115 and 500, claimant bears the burden of proving his claims by a preponderance of the evidence.

2. Subdivision (a) of Welfare and Institutions Code section 4646 states that the Lanterman Act respects the "needs and preferences" of the family and the developmentally disabled individual; promotes community integration; and ensures that IPP's are effective in meeting their stated goals without undue expense.

3. By statute, service agencies must cooperate with consumers and their families as appropriate in the care of the developmentally disabled. Subdivision (d) of

Welfare and Institutions Code section 4646 states that IPP's reflect agreement: the developmentally disabled individual and the individual's family (as appropriate) agree with the service agency as it purchases services, like vocational training from qualified agencies, or identifies generic resources, those available from non-exclusive sources, such as public schools and colleges.

4. Welfare and Institutions Code section 4648 provides that a service agency must provide consumers services and supports as stated in an IPP. Subdivision (a)(3) of the section more specifically states:

A regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer from an individual or agency that the regional center and consumer or, if appropriate, the consumer's parents . . . determines will best accomplish all or part of that consumer's program plan.

5. Welfare and Institutions Code section 4659 makes clear that a service agency is the provider of last resort. Before it funds services, it must "identify and pursue all possible sources of funding for consumers receiving . . . services." If other sources, generic sources such as the public schools or private insurance, for instance, fund needed services, then those sources must be used first.

//

//

//

//

6. As already noted, a fair hearing is not the process by which a 4731 complaint is decided, but Welfare and Institutions Code section 4731 is quoted below in pertinent part for context:

(a) Each consumer or any representative acting on behalf of any consumer or consumers, who believes that any right to which a consumer is entitled has been abused, punitively withheld, or improperly or unreasonably denied by a regional center, developmental center, or service provider, may pursue a complaint as provided in this section.

(b) Initial referral of any complaint taken pursuant to this section shall be to the director of the regional center from which the consumer receives case management services. . . .

[¶] . . . [¶]

(e) This section shall not be used to resolve disputes concerning the nature, scope, or amount of services and supports that should be included in an individual program plan, for which there is an appeal procedure established in this division, or disputes regarding rates or audit appeals for which there is an appeal procedure established in regulations. Those disputes shall be resolved through the appeals procedure established by this division or in regulations.

ANALYSIS

1. It is evident from page 1 of claimant's IPP's that he has focused his efforts of the past few years on learning just the sort of skills that Exceptional Minds is meant to enhance both by teaching and helping its graduates to secure jobs in the entertainment industry, its visual and digital special effects activities in particular. Actors for Autism likewise develops such skills and might have been suitable for claimant, but because it denied his application, it should not at present be considered a viable option for claimant. There was no evidence that another program is available to claimant that might meet his needs and interests in the way that the programs at Exceptional Minds and Actors for Autism might.

2. Claimant's evidence in this regard was almost entirely focused on Exceptional Minds. His evidence shows that claimant has had training from Exceptional Minds as his goal for years. Claimant's fair hearing request in this case does not mention Exceptional Minds specifically. It is open to the interpretation that claimant would be satisfied if the Service Agency funded a comparable program. But the evidence at the hearing provided no facts to support such an interpretation. There was no evidence indicating that another such program is available to claimant or would be a viable option.

3. Claimant has shown commendable perseverance and flexibility in reaching his vocational goal. Claimant's agreement to attend a vocational training program at Actors for Autism at the June 2020 mediation is a notable instance. The agreement was frustrated, however, when the organization did not accept claimant into the program. It appears that claimant has necessarily turned his attention back to Extraordinary Minds and to no other program.

4. Claimant's focus on Exceptional Minds is thoroughly reasonable. Publications from Exceptional Minds, such as the course catalog, Exhibit 15, and other materials that claimant introduced into evidence, show that the organization is well suited to claimant's interests and the abilities he has striven over the years to improve and adapt to a particular segment of the entertainment industry's job market. And the Lanterman Act requires that service agencies take a consumer's preferences into account in the provision of services.

5. That preference of the consumer, claimant in this case, must be considered, however, in light of a significant procedural issue: whether the claim here is precluded because claimant did not appeal a previous decision against him. It does appear that the September 2020 decision resolved the issue here. Claimant's evidence indicates that the only resolution of his fair hearing request would be for the Service Agency to fund his tuition at Exceptional Minds. As a procedural matter, such a resolution is not available in this proceeding.

6. When pertinent circumstances are unchanged, as is the case here, a later fair hearing may not be used to change the decision that resolved an earlier fair hearing. Put another way, the September 2020 decision may not be appealed in these proceedings. If claimant sought or seeks to modify the September 2020 decision, he was and is bound to follow established procedure in petitioning for a writ of mandate, as set out in Code of Civil Procedure section 1094.6, subdivision (b), "not later than the 90th day following the date on which the decision becomes final." (See *Conservatorship of Whitley* (2007) 155 Cal.App.4th 1447, 1466–67.)

CONCLUSION OF LAW

The Service Agency may not now be ordered to fund claimant's tuition to attend courses at Extraordinary Minds, given that an ALJ has previously decided that such finding is not required.

ORDER

Claimant's appeal is denied.

DATE:

THOMAS LUCERO
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.