

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

In the Matter of:

CLAIMANT,

vs.

FRANK D. LANTERMAN REGIONAL CENTER,

Service Agency.

OAH No. 2021070507

DECISION

Irina Tentser, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference and telephone on September 23, 2021.

Jessica Francy, Attorney, Waterson Huth & Associates, appeared and represented the Frank D. Lanterman Regional Center (FDLRC or Service Agency).

Claimant's mother, acting as Claimant's authorized representative, appeared and represented Claimant, who was not present at hearing.¹

Oral and documentary evidence was received. The record was left open for Claimant to file and serve a document regarding the closing of Claimant's case by the Lanterman Regional Center Special Education Legal Clinic no later than September 24, 2021, and for Service Agency to file any objections to Claimant's document no later than September 29, 2021. On September 27, 2021, Claimant filed the referenced document, marked and admitted as Exhibit K. No objection was filed by Service Agency.

The closed and the matter was submitted for decision on September 29, 2021.

STATEMENT OF ISSUES

The issue in this matter is whether Service Agency should have been required to fund Claimant's enrollment in a two-week Virtual Summer 2021 animation program offered at Exceptional Minds, a nonprofit organization which provides individuals with autism educational courses and vocational training in digital animation and visual effects for film and television.

EVIDENCE CONSIDERED

Documents. Service Agency's Exhibits 1-6; Claimant's Exhibits A-K.

¹ Claimant and his family are not identified by name to protect their privacy.

Testimony: Celene Heman, Service Coordinator; William Crosson, Regional Manager; Pablo Ibanez, Director of Frank D. Lanterman Regional Center Community Service Department; Claimant's mother.

FACTUAL FINDINGS

1. Claimant is a 17-year-old male receiving regional center services based on a diagnosis of autism spectrum disorder. Claimant has also been diagnosed with Attention-deficit/hyperactivity disorder (ADHD). He resides in the family home with both of his parents and his younger brother.

2. Claimant is a junior at La Canada High School, where he attends Special Day Classes (SDC) for most of the day, mainstreams for electives and Physical Education (PE), and is provided resource specialist support through La Canada Unified School District (LCUSD or district). LCUSD also provides Claimant with Resource Specialist Program (RSP) for English, weekly speech therapy, monthly Occupation Therapy (OT) consultation, and a full-time aide, the latter to help Claimant remain focused in class, provide continuous prompting, and to help Claimant with organization.

3. On May 3, 2021, Claimant and his mother attended a virtual Individual Program Plan (IPP) meeting. The IPP team acknowledged that Claimant's mother was working with the regional center special education law clinic (SE law clinic) to "better prepare [Claimant] for his goal to have a career in animation." (Exhibit 4.) The FDLRC Annual Review identified the social/leisure outcome was to have Claimant engage in a variety of activities and outings with others at home and in the community, which had been partially met. It was noted that because of COVID-19 social isolation

recommendations, Claimant had minimal interaction with peers. At the time, Claimant was participating in a weekly virtual art animation class where his interactions were with his instruction, rather than with peers. (*Id.*)

4. At the May 3, 2021 Annual Review, Claimant's mother informed Claimant's Service Coordinator, Celene Heman, that she wanted Claimant to participate in a summer program at Exceptional Minds (Summer Program) so Claimant could develop skills in animation, his preferred career path, and requested that Service Agency fund for Claimant's attendance at this program.

5. By Notice of Action dated June 10, 2021, Regional Center denied Claimant's mother's request that regional center fund the cost of Claimant's Summer Workshop. (Exhibit 1.) The bases for the denial included:

- The programs at Exceptional Minds, including the virtual Summer Program, are pre-vocational, educational programs and/or extracurricular activities. Service Agency cannot fund for education services for clients between the ages of three and seventeen years old unless Claimant meets the requirements for an exemption to the law. FDLRC did not consider Claimant to meet the exemption requirements. The virtual Summer Workshop was not considered a primary or critical means of ameliorating the physical, cognitive, or psychosocial effects of Claimant's developmental disability and he did not require the program to remain in the family home.
- The Exceptional Minds website states that Exceptional Minds is an autism education organization, and Service Agency cannot fund for programs that are segregated.

- Service Agency is the payor of last resort. In Claimant's case, LCUSD is responsible for providing pre-vocational training services as part of Claimant's Individual Transition Plan (ITP) and Individual Education Program (IEP). FDLRC cannot supplant the budget of the school district and is unable to provide funding for vocational training until Claimant graduates with a high school diploma or receives a certificate of completion from the school district. Service Agency noted it had referred Claimant to the Lanterman Special Education Law Clinic (SE Law Clinic) for legal advocacy so that Claimant's mother can request these supports through LCUSD.
- FDLRC must consider the family's responsibility in providing care and support for their minor child. Parents are expected to pay for their children's participation in extracurricular activities such as summer camp programs and workshops, regardless of whether the child has a developmental disability. These costs would be the Claimant's parents' responsibility, just as it would be the responsibility of a parent who had a child without a disability.

(Exhibit 1.)

6. On July 8, 2021, Claimant's mother filed a Fair Hearing Request on behalf of Claimant based on the "[D]enial of pre-vocational training for transition age son." (Exhibit 2.) To resolve the complaint, Claimant's mother requested "[F]unding of pre-vocational training for future employment." (*Id.*)

Exceptional Minds

7. After Service Agency's denial of the request to pay for the program, Claimant did not attend Exceptional Minds' Summer Program during summer 2021 because, as reported by Claimant's mother at hearing, the family did not have the financial ability to pay for the program, which cost approximately \$1,250.

8. According to its website, the Exceptional Minds summer 2021 virtual workshops were programs designed "to provide students on the autism spectrum digital art classes for summer fun or exploring a possible career path." (Exhibit 6.) Claimant's mother testified that Claimant would eventually like to enroll in the Exceptional Minds three-year full-time program and taking the part-time summer program will increase his likelihood of being accepted in the three-year program. (Exhibit B.) She further asserted that the Exceptional Minds summer workshop class was the only program she was able to find that offered the variety of software that would prepare Claimant for the full-time program: Animate, Photoshop, After Effects, Maya, Zbrush, and Unreal Engine. (Exhibit J.) In Claimant's mother's opinion, the Exceptional Minds Summer Workshop is necessary to achieve Claimant's ultimate vocational goals of a career in animation.

9. There is no dispute between the parties that Exceptional Minds is not a regional center vendor.

10. Claimant's mother testified that she had inquired whose responsibility it was to pay for the Exceptional Minds Summer Workshop. According to mother, the response from LCUSD was that Service Agency is the proper payor. To corroborate her testimony, Claimant's mother submitted an incomplete email message exchange chain from early September 2021 between her and Derek Ihori, Ed. D., LCUSD's Executive

Director, Special Education & Psychological Services. (Exhibit H.) The email exchange confirms that the district notified Claimant's mother that payment for the program would not be LCUSD's financial responsibility. (*Id.*) However, there is no affirmative statement by Dr. Ihori that payment for the program is Service Agency's responsibility, as Claimant's mother asserts.

11. Claimant's mother confirmed at hearing that she did not request that the district pay for the program until September 2021, months after the request was first submitted to Service Agency. An incomplete IEP was provided by Claimant's mother to Service Agency. (Exhibit 5.) There is no indication that payment of the Exceptional Minds Summer Program was discussed at the June 1, 2020 IEP meeting with the district. (Exhibit 5.)

12. According to Claimant's mother, she was instructed by Service Agency's SE law clinic not to submit the request to fund for Exceptional Minds to the district because the focus of the clinic's representation was to obtain a comprehensive training assessment for Claimant so that his transition plan, a plan that provides a roadmap of services and programs to transition Claimant from a minor to an adult, could be completed at the district level. As of the date of hearing, Claimant was awaiting the completion of an independent comprehensive training assessment because Claimant's mother was dissatisfied with the assessment performed by the district.

13. Claimant's mother's testimony that the SE law clinic instructed her not to discuss the request to fund for the Exceptional Minds Summer Program with the district at the IEP is not convincing in that it is uncorroborated and self-serving. In fact, prior to hearing, Service Agency was not aware that the SE law clinic had closed Claimant's file in June 2021 because, according to the clinic's legal advocate Ariel

Greenwood, the clinic had "not received any response from our recent attempts to contact [Claimant's mother]." (Exhibit K.)

14. Service Agency witnesses confirmed that as part of Claimant's IPP it had agreed to fund social skills training and community integration services for Claimant as of April 2021. FDLRC was not notified by Claimant's mother until August 2021 that he was not accessing those services because of school scheduling conflicts and lack of available requested male staff from the community integration vendor. The issues related to what current services, if any, Service Agency had been providing to Claimant had yet to be resolved at the time of the hearing.

15. Claimant's mother previously requested in February 2021 that Service Agency fund a weekend Exceptional Minds class; that prior request was also denied by FDLRC. At hearing, because the Exceptional Minds Summer Program had already passed, Claimant's mother requested that Service Agency be ordered to proactively fund for Claimant's future weekend Exceptional Minds classes. No evidence was presented regarding any efforts on behalf of Claimant to obtain scholarships, Summer Program payment subsidies, or assistance through Exceptional Minds or its third-party financial assistance vendors.

16. FDLRC's Director of Community Service Department, Pablo Ibanez, testified at hearing that Service Agency's purchase of service policies also prohibited the payment of programs administered by Exceptional Minds, a non-vendor.

17. Generally, at hearing, Claimant's Mother expressed ongoing concerns for the lack of transitional focused services Claimant has received. Specifically, Mother is concerned that insufficient planning, services, and programs have been provided to Claimant to facilitate his transition from a minor to an adult consumer. In December

2020, Claimant was transferred on a temporary basis to Service Coordinator Celene Heman after Claimant's mother expressed concerns with his prior Service Coordinator's ability to address his needs as a transitional client.

18. The transfer to Ms. Heman was intended to be temporary. However, as of the date of hearing, Claimant had yet to be transferred to a FDLRC Service Coordinator who is experienced in addressing the needs of a transitional consumer such as Claimant. While Ms. Heman is well-meaning, her experience, by her own admission, is primarily focused on child consumers and she was not aware of potential programs, such as those administered by the Department of Rehabilitation (DOR), that could potentially address Claimant's future vocational goals as a transitional consumer.

19. Claimant will turn 18 in April 2022. Based on the circumstances, no further delay is advisable. FDLRC should promptly transfer Claimant to a Service Coordinator who is knowledgeable and specializes in transitional consumers and can more effectively assist in Claimant's transition to an adult consumer by allowing him to access services and programs that can effectively address his ultimate goals, including a career in animation.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Claimant, as the party seeking government benefits or services, bears the burden of proof. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156.)

2. The standard of proof in this case is the preponderance of the evidence. (Evid. Code, § 115.)

Legislative Objectives

3. The Lanterman Developmental Disabilities Services Act (Lanterman Act) sets forth a regional center's obligations and responsibilities to provide services to individuals with developmental disabilities. (Welf. & Inst. Code, § 4500 et seq.) The purpose of the Lanterman Act is to establish an array of services and supports sufficiently complete to meet the needs and choices of persons with developmental disabilities, regardless of their age or degree of disability, and at each stage of life, and to support their integration into the mainstream of the community. (Welf. & Inst. Code, § 4501.) To comply with the Lanterman Act, a regional center must provide services and supports that "enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age." (*Id.*) Consumers of services and supports, and where appropriate, their parents, should be empowered to make choices in all areas of life. (*Id.*)

4. The legislative intent of the Lanterman Act is to ensure that "the provision of services to consumers and their families be effective in meeting the goals stated in the [IPP], reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources." (Welf. & Inst. Code, § 4646, subd. (a).) Regional centers must assist persons with developmental disabilities and their families "in securing those services and supports which maximize opportunities and choices for living, working, learning, and recreating in the community." (Welf. & Inst. Code, § 4640.7, subd. (a).)

5. The Legislature has further declared that regional centers must provide, or secure family supports that, in part, respect and support the decision-making authority of the family, are flexible and creative in meeting the unique and individual needs of the families as they evolve over time and build on family strengths and

natural supports. (Welf. & Inst. Code, § 4685, subd. (b).) Moreover, services must be individually tailored to the consumer. (Welf. & Inst. Code, § 4648, subd. (a)(2).)

6. “Notwithstanding preexisting rights to enforce the [Lanterman Act], it is the intent of the Legislature that [DDS] ensure that the regional centers operate in compliance with federal and state law and regulation and provide services and supports to consumers in compliance with the principles and specifics of [the Lanterman Act].” (Welf. & Inst. Code, § 4434, subd. (a).) Regional Center services must be provided in the most cost-effective and beneficial manner. (Welf. & Inst. Code, § 4685, subd. (c)(3).) DDS must “take appropriate and necessary steps to prevent regional centers from utilizing a policy or guideline that violates any provision of [the Lanterman Act] or any regulation adopted thereunder.” (Welf. & Inst. Code, § 4434, subd. (d).)

Statutory and Regulatory Framework

7. Welfare and Institution Code² section 4648.5, subdivision (a)(1)-(4), states, in relevant part:

Notwithstanding any other provision of law or regulations to the contrary, effective July 1, 2009, and ending on June 30, 2021, a regional centers’ authority to purchase the following services shall be suspended . . . [¶] . . . [¶]

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

(3) Educational services for children three to 17, inclusive, years of age.

(4) Nonmedical therapies, including, but not limited to specialized recreation, art, dance and music . . .

8. Section 4648.5, subdivision (c), states:

An exemption may be granted on an individual basis in extraordinary circumstances to permit purchase of a service identified in subdivision (a) when the regional center determines that the service is a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of the consumer's developmental disability, or the service is necessary to enable the consumer to remain in his or her home and no alternative service is available to meet the consumer's needs.

9. It is noted that pursuant to section 4648.5, subdivision (d), section 4648.5 became inoperative on July 1, 2021, and as of January 1, 2022, is repealed. However, it is applicable in this instance as FDLRC's NOPA was dated June 10, 2021, when section 4648.5 was still in effect.

10. Section 4659, subdivision (a)(1) states, in relevant part:

[T]he regional center shall identify and pursue all possible sources of funding for consumers receiving regional center services. These sources shall include, but not be limited to . . .
. Governmental or other entities or programs required to

provide or pay the cost of providing services, including school districts . . .

11. Section 4646.4, subdivision (a)(1)-(4), states, in relevant part:

Regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's individual program plan . . . the establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and when purchasing services and supports, shall ensure all of the following:

(1) Conformance with the regional center's purchase of service policies . . .

(2) Utilization of generic services and supports when appropriate . . .

(3) Utilization of other services and sources of funding as contained in Section 4659 . . .

(4) Consideration of the family's responsibility for providing similar services and supports for a minor child without disabilities in identifying the consumer's service and supports needs as provided in the least restrictive and most appropriate setting . . .

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12. Section 4688, subdivision (a), states, in relevant part:

Consistent with the state and federal law, the Legislature places a high priority on providing opportunities for individuals with developmental disabilities to be integrated into the mainstream life of their natural communities. In order to ensure that opportunities for integration are maximized, the procedure described in subdivision (b) shall be adopted.

13. A regional center may, "pursuant to vendorization or a contract," purchase services or supports for a consumer from any individual or agency that the IPP participants determine will best accomplish any part of the consumer's IPP. (Welf. & Inst. Code, § 4648, subd. (a)(3).) Generally, a regional center must identify and pursue all possible sources of funding for consumers receiving regional center services. (Welf. & Inst. Code, § 4659, subd. (a).)

14. The Legislature created a statutory scheme regulating direct service providers. (Welf. & Inst. Code, §§ 4648, subd. (a)(3)-(5), 4648.1.) DDS was delegated the authority "to adopt regulations governing the vendorization process to be utilized by . . . regional centers, vendors, and the individual or agency requesting vendorization." (Welf. & Inst. Code, § 4648, subd. (a)(3)(B).)

15. Pursuant to its delegated authority, DDS adopted regulations applicable to the vendorization process, including but not limited to the following regulatory provisions:

(A) An applicant who desires to be a vendor with a regional center must submit an application, furnish required information about the services to be

provided, and produce documentation to show the applicant's qualifications to provide those services. (Cal. Code Regs., tit. 17, §§ 54310, 54311.) An applicant must certify that the information is true, correct, and complies with the regulations. (Cal. Code Regs., tit. 17, § 54310, subd. (b).)

(B) The applicant or vendor must disclose all the information required by applicable federal regulations, and information pertaining to ownership and control of the service-providing entity. (Cal. Code Regs., tit. 17, § 54311, subd. (a).) Certain applicants, including state government employees and those with a conflict of interest with a regional center, are ineligible for vendorization. (Cal. Code Regs., tit. 17, § 54314.)

(C) An applicant must disclose whether any agent, director, officer, or managing employee of the applicant has within the previous 10 years: (1) Been convicted of any felony or misdemeanor involving fraud or abuse in any government program, or related to neglect or abuse of an elder or dependent adult or child, or in any connection with the interference with, or obstruction of, any investigation into health care related fraud or abuse; (B) been found liable in any civil proceeding for fraud or abuse involving any government program; or (C) entered into a settlement in lieu of conviction involving fraud or abuse in any government program. (Cal. Code Regs., tit. 17, § 54311, subd. (a)(6).)

(D) The vendoring regional center must approve vendorization within 45 days of receipt of all information which specifies that the applicant is in compliance with the criteria set forth at California Code of Regulations, title 17, section 54320, subdivision (a). (Cal. Code Regs., tit. 17, § 54322, subd. (a).)

(E) The regional center “shall assign a service code to the vendor based upon the program design and/or the services provided.” (Cal. Code Regs., tit. 17, § 54340, subd. (c).) A “vendor” is defined in the regulations as “an applicant which has been given a vendor identification number and has completed the vendorization process.” (Cal. Code Regs., tit. 17, § 54302, subd. (a)(74).)

(F) A vendor may charge its “usual and customary rate,” meaning the rate the vendor regularly charges for its service, where at least 30 percent of the recipients of the given service are not regional center consumers or their families. (Cal. Code Regs., tit. 17, § 57210, subd. (a)(19).) New programs applying for vendorization must provide a written declaration to the regional center that “it is their intent to comply with this [regulation] and be given 12 months to achieve compliance.” (*Id.*)

Discussion

16. In this case, Claimant’s attendance at Exceptional Minds, a pre-vocational and educational service, furthers his ultimate vocational goals and may serve to develop his talent in animation and computer skills, a stated objective of his IPP. However, Claimant’s mother has failed to provide sufficient evidence that generic resources were exhausted prior to requesting that Service Agency fund for the 2021 Summer Workshop at Exceptional Minds. To assist Claimant in securing additional pre-vocational services through the IEP process, Service Agency should refer Claimant again to the Lanterman SE Law Clinic so that his case can be reopened.

17. Further, at the time of Claimant’s mother’s request FDLRC pay for the program in April 2021, the law did not permit regional centers to fund for educational services absent an exemption. Accordingly, Service Agency properly determined that the requested pre-vocational training program was not a primary or critical means for

ameliorating the physical, cognitive, or psychosocial effects of Claimant's developmental disability and that the Exceptional Minds workshop was not required to keep Claimant in the family home.

18. Service Agency is required to fund for programs that encourage community integration for its consumers. As a segregated non-vendored program, Exceptional Minds is comprised of students who all have a diagnosis of autism and/or other disability. Accordingly, the program runs counter to the principles espoused in section 4688, subdivision (a), and the Service Agency's purchase of service policy.

19. Most relevant to this case, regional centers must consider the family's responsibility in providing care and support for their minor child. Parents are expected to pay for their children's participation in extracurricular activities such as summer camp programs and workshops, regardless of whether the child has a developmental disability. Here, Claimant's mother believes that Exceptional Minds is the best organization to meet Claimant's goals. While Claimant's mother is free to choose any program that she feels fits her child's aspirations, the responsibility ultimately falls on the parents of Claimant to pay for that choice, just as it would be the responsibility of any parent who has a child without a disability.

20. Claimant has not established through a preponderance of the evidence that Service Agency should have funded the Summer 2021 Exceptional Minds Summer Workshop. Claimant's request to prospectively fund for Exceptional Minds weekend classes is outside the jurisdiction of this matter and is also denied.

21. Aside from the issue resolved through hearing, based on the evidence presented, it is clear Claimant's mother and the FDLRC have areas of miscommunication which must be addressed in a timely manner so that Claimant can

receive the services and programs that most directly address his needs as a transitional consumer. For example, Claimant should be promptly transferred to a Service Coordinator who specializes in transitional aged soon to be adults, like Claimant.

22. To that end, the parties should meet within 30 days of the date of the instant decision for an IPP meeting to identify Claimant's current goals and outcomes.

ORDER

1. Claimant's appeal is denied. The Service Agency was not required to fund Claimant's enrollment in a two-week Virtual Summer 2021 animation program offered at Exceptional Minds.

2. FDLRC and Claimant shall meet within 30 days of the instant Decision at an IPP meeting.

DATE:

IRINA TENTSER

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.