

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

**In the Matter of:**

**CLAIMANT**

**and**

**INLAND REGIONAL CENTER, Service Agency**

**OAH No. 2021110683**

**DECISION**

Adam L. Berg, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter telephonically on January 6, 2022.

Claimant's mother represented claimant.

Keri Neal, Fair Hearings Representative, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

Oral and documentary evidence was received. The record was closed, and the matter submitted for decision on January 6, 2022.

## **ISSUE**

Is IRC required to fund water safety/swim lessons for claimant through Cogua Aquatics?

## **FACTUAL FINDINGS**

### **Background**

1. Claimant is a six-year-old boy who qualifies for regional center services based on a diagnosis of autism spectrum disorder. Claimant lives at home with his mother and father.

2. On August 2, 2021, IRC served claimant with a Notice of Proposed Action denying his request to fund water safety/swim lessons through Cogua Aquatics (Cogua). IRC denied the request because swim lessons are not considered a specialized service or support; it would be expected that a parent with a pool at home would provide water safety or swim lessons for a minor child, or provide direct care and supervision to minor children while they are swimming; there are generic resources in the community that provide a similar service; and the concerns about safety could be addressed through claimant's Applied Behavioral Analysis (ABA provider).

3. On November 19, 2021, claimant's mother filed a Fair Hearing Request appealing IRC's denial. Following an informal meeting on December 16, 2021, IRC adhered to its determination that it would not fund water safety or swim lessons. In a letter memorializing the meeting, IRC confirmed that claimant was requesting to have swim lessons funded through Cogua's "level 6." This hearing followed.

## **IRC's Evidence**

4. On July 20, 2021, claimant's mother emailed claimant's consumer services coordinator and requested swim lessons because they have an in-ground pool at home, claimant does not have any safety awareness inside or outside the home; he lacks the ability to foresee danger, and he would benefit from swim instruction. Claimant's mother located a provider, Cogua, which focuses on lessons for individuals with special needs and recommended two 25-minute private lessons per week.

5. On July 27, 2021, claimant's consumer services coordinator informed claimant's mother by email that after conferring with his supervisor, IRC would not fund swim lessons. He advised her that she should contact claimant's ABA provider to include safety awareness about being around the home pool as part of his sessions. Additionally, he provided some additional names of locations that provided swim lessons, which would potentially provide reduced fees due to family income.

6. According to an Individual Program Plan (IPP) meeting held on May 3, 2021, claimant does not follow instructions while out in the community and attempts to elope. This is a safety concern that prevents claimant's mother from taking him into the community. These are issues claimant is working on through his ABA provider.

7. Cogua provides six levels of instruction. Claimant has requested funding for swim lessons through level six. According to a description on Cogua's website, the first level is strictly for water survival; level two is to introduce basic technique so the swimmer can get from one side of the pool to the other; level three is basic skills in freestyle and backstroke; level four is basic skills in butterfly and breaststroke; level 5 is competitive skills in freestyle and backstroke; and level six is competitive skills in butterfly and breaststroke.

8. Cogua is not vendored with IRC. There is no information on their website that they specialize in or work with special needs populations. There are other swim lesson providers in the area such as the Red Cross that provide financial assistance to those who qualify.

9. The pool at claimant's home is surrounded by a fence that has a magnetic locking system.

### **Claimant's Evidence**

10. Claimant's mother testified that the ABA provider will only provide services in the home and thus cannot work on safety outside or in the community. The pool at home is surrounded by a gate, and claimant knows not to go near the pool, but as he gets older, he will be harder to control. She wants to also make sure he is safe if they go to a community pool. Claimant has already been receiving lessons through Cogua. He completed level one and is ready to proceed to the next level. Although claimant's mother looked at the other resources, they only offer swim lessons seasonally. Cogua utilizes an indoor pool and offers lessons year-round. They also work with children who are on the autism spectrum.

## **LEGAL CONCLUSIONS**

### **Burden of Proof**

1. In a proceeding to determine whether regional center should fund certain services, the burden of proof is on the claimant to establish by a preponderance of the evidence that the regional center should fund the requested service. (Evid. Code, § 115.) A preponderance of the evidence means that the evidence

on one side outweighs or is more than the evidence on the other side, not necessarily in number of witnesses or quantity, but in its persuasive effect on those to whom it is addressed. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

## **Relevant Law and Regulations**

2. The Legislature enacted a comprehensive statutory scheme known as the Lanterman Developmental Disabilities Services Act (Lanterman Act) (Welf. & Inst. Code, § 4500 et seq.) to provide a pattern of facilities and services sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life. The purpose of the statutory scheme is twofold: 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. (*Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.) Welfare and Institutions Code section 4501 outlines the state's responsibility for persons with developmental disabilities and the state's duty to establish services for those individuals.

3. The Department of Developmental Services (DDS) is the public agency in California responsible for carrying out the laws related to the care, custody and treatment of individuals with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4416.) In order to comply with its statutory mandate, DDS contracts with private non-profit community agencies, known as "regional centers," to provide the developmentally disabled with "access to the services and supports best suited to them throughout their lifetime." (Welf. & Inst. Code, § 4620.)

4. Welfare and Institutions Code section 4512, subdivision (b) defines “services and supports” as:

[S]pecialized 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. The determination of which services and supports are necessary for each consumer 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 or, when appropriate, the consumer’s family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option . . .

5. A regional center’s responsibilities to its consumers are set forth in Welfare and Institutions Code sections 4640 to 4659.

6. Welfare and Institutions Code section 4646 requires that the IPP and the provision of the services and supports be centered on the individual with developmental disabilities and take into account the needs and preferences of the individual and the family. Further, the provisions of services must be effective in

meeting the IPP goals, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

7. Welfare and Institutions Code section 4646.4, subdivision (a), requires regional centers to establish an internal process that ensures adherence with federal and state law and regulation, and when purchasing services and supports, ensures conformance with the regional center's purchase of service policies, utilization of generic services and supports when appropriate, and consideration of the family's responsibility for providing similar services and supports for a minor child without disabilities.

## **Evaluation**

8. Claimant had the burden to show by a preponderance of the evidence that IRC should fund swim lessons. Claimant did not meet his burden for multiple reasons. First, swim lessons are not a specialized service or support because they are not 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. While it is appreciated that claimant has behavioral issues including eloping, the pool at claimant's home is surrounded by a gate with a magnetic locking system. Moreover, parents with a minor child without a disability would be expected to provide water safety, swim lessons, or supervision for their children, especially if they have a pool at their house. There are also more cost-effective swim lesson providers available in the community that claimant may utilize, and IRC is prohibited from funding a service where generic resources are available. Further, IRC funding swim lessons with a non-IRC vendor would not be a cost-effective expenditure of public funds, even if other swim lesson providers do not operate during

the winter. Finally, claimant is seeking funding through level 6, which is instruction on competitive swimming technique in butterfly and breaststroke. This goes well beyond basic water safety, which he has already completed, and IRC is also prohibited from funding services retroactively. Accordingly, IRC is prohibited from funding swim lessons under these circumstances.

## **ORDER**

Claimant's appeal is denied.

DATE: January 19, 2022

ADAM L. BERG

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.