

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

**In the Matter of:**

**CLAIMANT,**

**vs.**

**SAN GABRIEL REGIONAL CENTER, Service Agency.**

**OAH No. 2021120109**

**DECISION**

Jennifer M. Russell, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by telephone and videoconference on March 17, 2022. Daniel Ibarra, Fair Hearing Specialist, represented San Gabriel/Pomona Regional Center (SGPRC or service agency). Claimant's mother (Mother) represented Claimant, who was not present at the hearing. To preserve confidentiality, Claimant and Mother are not identified by name.

Testimony and documentary evidence was received. The matter was submitted for decision on March 17, 2022. The Administrative Law Judge makes the following Factual Findings, Legal Conclusions, and Order dismissing Claimant's appeal.

## **ISSUE**

Whether the service agency should grant Claimant's request for a center-based, non-behavioral day program.

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. On November 1, 2021, SGPRC issued a Notice of Proposed Action denying Mother's request for a center-based, non-behavioral day program for Claimant.
2. On November 6, 2021, Mother filed a Fair Hearing Request.
3. On December 23, 2021, SGPRC and Mother were notified about the time, place, and date of the fair hearing.
4. All jurisdictional requirements are satisfied.

### **Claimant's Background**

5. Claimant is a 22-year-old female consumer of SGPRC due to her qualifying diagnosis of Intellectual Disability (Mild). Claimant presents with Mood Disorder, Intermittent Explosive Disorder, Attention Deficit Hyperactivity Disorder, and Unspecified Congenital Anomaly of Heart. Claimant resides in a single-parent household with Mother. Claimant is a high school graduate, and she has completed an adult transition program.

6. Claimant's most recent Individual Program Plan (IPP), which is dated May 21, 2020, documents her ability to attend to her self-care needs with minimal assistance, her broad vocabulary used to communicate her needs, and her personal and emotional growth with self-regulation. Claimant's IPP discloses she has a history of verbal and physical aggression when bored, upset, or angry. Claimant's aggression has interfered with her ability to participate fully in her community and socialize with her peers.

7. SGPRC has been funding 160 hours of behavior intervention services provided monthly to Claimant in her home through T.O.T.A.L. Programs. These home-based behavior intervention services primarily target the aggressive behaviors Claimant manifests when she is denied a preferred activity or when Mother is teleworking and therefore unavailable to engage with her.

### **Mother's Request for a Center-Based, Non-Behavioral Day Program**

8. Since onset of the March 2020 COVID pandemic emergency, Claimant has been spending her time at home. Mother has been teleworking, and during her work hours she is unavailable to attend to Claimant. Mother maintains Claimant is bored and depressed. Mother wants "something meaningful for [Claimant] to do." Mother testified, "I work full-time and I can't take care of [Claimant] while I'm working. I'm happy to get anything to help [Claimant] get socialization with peers."

9. Mother requested SGPRC to fund a center-based, non-behavioral day program for Claimant. Center-based programs operate at designated sites offering various activities and services. By contrast, community-based programs do not operate from any pre-designated location. Community-based programs encompass services

available from merchants and public and private institutions within particular communities.

10. SGPRC denied Mother's request maintaining Claimant presents a risk of harm to herself and others if she were placed in a center-based day program at this time. SGPRC's denial is based on incidents occurring in August and October 2021.

11. On August 25, 2021, after an in-home behavior intervention session concluded, Claimant demanded her behavior specialist take her to Starbucks. The behavior specialist reminded Claimant her Mother's permission was required. Claimant yelled, "Let's go to Starbucks now!" The behavior specialist attempted to deescalate the situation. Claimant threatened, "I'm going to kill you!" and "I'm going to pull your hair." Claimant attempted grabbing the behavior specialist's hair. The behavior specialist responded by blocking Claimant. Claimant grabbed the behavior specialist's shirt and pulled it down. The behavior specialist used a crisis management technique to remove Claimant's hands from her clothing. Claimant kicked towards the behavior specialist's abdominal area and the behavior specialist, who was pregnant at the time, turned her body to avert Claimant's kick, which landed on her lower back, side legs, and buttocks. Claimant yelled, "I'm going to kill you!" while repeatedly attempted kicking the behavior specialist. Claimant called 911 and told the dispatcher the behavior specialist was abusing and hurting her. In the presence of the responding law enforcement officers, Claimant attempted to push the behavior specialist out of the house.

12. On October 6, 2021, Claimant complained about dizziness. Mother took Claimant to the emergency room, where after examination Claimant was discharged without obtaining a specific diagnosis for her condition. After returning home, Claimant insisted she had to return to the emergency room. When Mother declined,

Claimant cried, screamed, and pulled Mother to such an extent that Mother was required to call the non-emergency number at her local police department.

13. On October 7, 2021, a behavior specialist arrived at Claimant's residence to provide services when she observed Claimant in an agitated state crying and yelling at Mother. At some point, Claimant grabbed Mother's clothing and repeatedly hit her. Claimant also grabbed the behavior specialist's hair and hit the behavior specialist's head multiple times. Both Mother and the behavior specialist attempted blocking Claimant's blows as she continued hitting them while crying and screaming. Law enforcement officers and paramedics who were summoned to the residence deescalated the incident.

14. Mother does not dispute the August and October 2021 incidents occurred. Mother maintains Claimant is showing improvement. In a February 8, 2022 Progress Report, Claimant's behavior interventionist provider, T.O.T.A.L., reports decreasing incidents of Claimant engaging in physical and verbal aggression during session times.

15. As an alternative to Mother's request, SGPRC recommended APEX, a structured, community-based day program. Claimant's service coordinator's note documenting the recommendation provides the following information about APEX:

This program is a 1:1 program where someone will always be with [Claimant]. From what I was told, it is a day program that will cater to [Claimant's] needs. They can work with her 5-6 hours a day and prepare her to begin working and assist her in finding a job and supporting her while she works. They can arrange her schedule on how you guys

would like. For example, they can have her do the Day program portion for 3 days a week and be with her while she works the other 1-2 days she works. She doesn't have to start working right away, They can build up to that if you'd like. This program is considered community based however they will be in your community. They can pre plan a weekly schedule so you will know where exactly she is daily, and where they go or what they do will cater to [Claimant] and her goals. Community based doesn't necessarily mean she will be out and about everywhere all day. Their day or time may be spent, for example, in a nearby library.

(Exh. 9 at p. 3.)

16. After obtaining information from persons associated with APEX, Mother agreed to APEX for Claimant. In accordance with its December 9, 2009 Board Approved Purchase of Service Policy, SGPRC has approved funding for Claimant's participation in APEX's community integration day program six hours per day, five days per week for the six-month period commencing February 1, 2022 and ending August 31, 2022.

17. Mother continues to believe Claimant requires a center-based day program where Claimant has opportunities for socialization with her peers. Mother offered a February 10, 2022 letter from a child and adult psychiatrist treating Claimant who expressed concern about Claimant's lack of socialization. The psychiatrist states in the letter, "I believe it would be in her best interest to place her in a class such as a

swimming class, which would not only benefit her social skills development, but also provide her with much needed regular exercise.” (Exh. A.)

## **LEGAL CONCLUSIONS**

1. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act (Lanterman Act), which 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 service cost effectiveness. (*Id.* at §§ 4646, 4646.5, 4647, and 4648.)

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. 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 rehabilitation 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 day care and community integration services. (*Id.*)

3. It is undisputed Claimant presents with a history of verbal and physical aggression when bored, upset, or angry. Notwithstanding reports Claimant's aggression was decreasing during sessions she received behavioral intervention services, most recently, in August and October 2021, Claimant exhibited levels of aggression warranting the assistance of law enforcement officers to deescalate multiple situations. These incidents suggest Claimant has not yet achieved a level of self-regulation necessary to support a finding she is unlikely to engage in conduct that presents a risk of harm to others. Under these facts and circumstances, ongoing behavior intervention services provided by T.O.T.A.L. combined with a community-based day program provided by APEX appropriately meet Claimant's stated IPP goals at this time.

4. Claimant's behavior intervention services provided by T.O.T.A.L. and participation in community-based day program by APEX are subject to change consistent with any subsequent modification of Claimant's IPP goals.

5. As the party asserting a claim for services and supports under the Lanterman Act, Claimant bears the burden of establishing by a preponderance of evidence her entitlement to the services and supports. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 (disability benefits); *Greatoroex v. Board of Admin.* (1979) 91 Cal. App.3d 54, 57 [retirement benefits]).

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6. Based on Factual Findings 5 through 17 and Legal Conclusions 1 through 5, Claimant failed to establish cause exists for San Gabriel/Pomona Regional Center to fund a center-based, non-behavioral day program for Claimant.

### **ORDER**

Claimant's appeal is denied.

DATE:

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 ninety (90) days.