

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

In the Matter of:

CLAIMANT,

vs.

SAN GABRIEL / POMONA REGIONAL CENTER,

Service Agency.

OAH No. 2021120814

DECISION

Julie Cabos-Owen, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on January 31, 2022. Daniel Ibarra, Fair Hearing Specialist, represented San Gabriel / Pomona Regional Center (SGPRC or Service Agency). Claimant was represented by her mother. (The names of Claimant and her family are omitted to protect their privacy.)

Testimony and documents were received in evidence. The record closed and the matter was submitted for decision on January 31, 2022.

ISSUE

Should SGPRC be required to fund piano lessons for Claimant?

EVIDENCE

The documentary evidence considered in this case was: Service Agency exhibits 1 - 9, and Claimant's exhibits A - E. The testimonial evidence considered in this case was that of Claimant's mother.

FACTUAL FINDINGS

1. Claimant is a 10-year-old female client of SGPRC. She qualifies for regional center services under a diagnosis of Mild Intellectual Disability (ID).
2. Claimant currently lives in a home with her mother and father. She attends public elementary school and participates in a special education program.
3. Claimant reportedly likes "drawing, coloring, singing, and playing with her cousins." (Exhibit 3.)
4. In a January 23, 2020 Individualized Education Plan, Claimant's school district assessed her gross motor and fine motor abilities as follows:

Gross/Fine Motor Development

Occupational Therapy 2020:

Fine Motor Given verbal prompt "write your name"
[Claimant] is able to sustain a tripod grasp with use of adaptive equipment (pencil grip) to write her first and last name within one-inch boundaries of three-lined paper with good formation of all letters except the letter "r". She is able to copy uppercase letters of the alphabet within a one-inch three-lined boundary using appropriate formation, sizing, and use of boundaries with 85% (22/26) accuracy. She is able to cut a 3-4 inch complex shape (e.g., polygon, zig-zig) without deviating more than 1/8-inch from the lines and at least 3 distinct corners. [Claimant] is able to copy lowercase letters of the alphabet within a one-inch three-lined boundary using appropriate formation, sizing, and use of boundaries with 69% (18/26) accuracy 75% of the time[.]

[Adaptive Physical Education (APE)] 2020:

[Claimant] enjoys APE when activities are engaging. . . . When in APE, [Claimant] is able to access the playground area, she can kick a stationary ball, she is able to catch a medium size ball from 5-10 feet away, she can strike the ball off a tee, she is able to jump and land on both feet, and she cooperates well with others. [Claimant] enjoys the swings and balancing herself on the balance beam.

(Exhibit 6.)

5. In a June 9, 2020 Individual Program Plan (IPP) meeting between Claimant's mother and her SGPRC Service Coordinator, Claimant's mother reported Claimant was attending school virtually and qualified for an after school program and for a summer program. The June 9, 2020 IPP noted Claimant received speech services funded by the school district and by the family's private insurance. The June 2020 IPP also noted Claimant "receives [occupational therapy (OT)] service from family insurance." (Exhibit 3.)

6. In a June 2021 annual IPP progress report, Claimant's mother reported Claimant's social skills were improving. Claimant was attending in-person summer school, and she enjoyed seeing her friends there. Claimant also had a neighborhood friend with whom she played. At that time, Claimant continued to qualify for speech therapy through her school district, and the Service Agency funded respite, daycare, and floor time therapy.

7. On July 1, 2021, the Welfare and Institutions Code section that previously suspended a regional center's ability to fund "social recreational activities" and "nonmedical therapies, including . . . art, dance, and music" became inoperative. (Welf. & Inst. Code, §4648.5.)

8. In an October 25, 2021 IPP Addendum, goals were added to Claimant's IPP. The 2021 Addendum noted:

Parents wants [sic] [Claimant to] also makes [sic] improvements with her fine motor skill/muscle tone through activities. Parents would like [Claimant] to become more independent, be productive, to have a normal life in the community, to be enable[d] . . . to approximate the

pattern of everyday living of a non-disabled person of the same age, and to [have] opportunities to participate in community life.

(Exhibit 5.)

9. In October 2021, Claimant's mother requested Service Agency funding of "social recreational activities" to help meet the IPP goals of: (1) enabling her to approximate the pattern of everyday living of a non-disabled person of the same age; (2) leading a more independent, productive, and normal life in the community; and (3) having opportunities to participate in community life. In an October 2021 email to the Service Agency, Claimant's mother noted the status of the law pertaining to funding of social recreational services, and she requested the following:

I am requesting for art, dance, music, . . . and swimming classes be paid by [SGPRC]. Due to health and safety reasons, weak muscle tones [*sic*], poor eyes, and weak hand coordination movement, I would like to request for social recreational activities be [*sic*] part of her therapies so that these activities can enhance her awareness and capabilities. Also, this will allow her to have a greater integration impact into the community.

I don't believe in seclusion so having her take these social recreational activities will allow her to have the services and support that can be provided by Regional Center.

(Exhibit 7.)

10. In October 2021, Claimant's mother specifically requested Service Agency funding for swimming lessons and private piano lessons.

11. On November 29, 2021, the Service Agency sent Claimant a Notice of Proposed Action (NOPA), denying the request for funding of swimming lessons and piano lessons. Claimant's mother filed a Fair Hearing Request to contest the denial. (The request for funding swimming lessons was resolved by the parties prior to the fair hearing and is not addressed herein.)

12. In its NOPA, the Service Agency cited Welfare and Institutions Code sections 4512, subdivision (b), and 4646.4, subdivision (a), as the laws supporting the denial of services. The stated factual bases for the NOPA were as follows:

You requested for regional center to fund piano lessons: four lessons at once a week, at the rate of \$150. [¶] You also stated that [Claimant] will be able to make improvement with her fine motor skill/muscle tone when she plays the piano while also learning to engage with other people. SG/PRC currently funds for [Claimant's] respite (20 hours/mo.), daycare (67hours/mo.), extended year (16 hours from 11/22/21 to 11/26/21), and floor time therapy (32 direct hours/mo. with 8 hours/mo. supervision) services.

Your request was reviewed, and it has been denied. The ability to fund for social recreation activities, specialized recreation, art, dance, and music has been re-stored to regional centers but regional centers consider the type of service being requested as a family's responsibility for

providing services. Piano . . . lessons are not specialized services directed toward the alleviation of a developmental disability.

(Exhibit 1.)

13. In January 2022, a Service Agency Occupational Therapist conducted a records review regarding Claimant's request for Service Agency funding of piano lessons. Following her review, the Occupational Therapist explained the difference between a "therapy" and other recreational activities, noting:

Parent is requesting piano lessons to help [Claimant] improve her fine motor skills[.]

The goal of piano lessons/instruction is to assist an individual in learning a new instrument and to improve musical skills. Therapy is intended to improve quality of life and provide treatment of disorders through improved motor skills or coordination with the use of remedial, rehabilitative, or curative process. [¶]

[P]iano lessons/instruction is considered to be an activity that is available to all individuals and that can be provided by a child's family as a typical or recreational activity.

[Recommendation:] Parent to pursue therapy services via school district to address her concerns with child's fine motor skills.

(Exhibit 9.)

14. At the fair hearing, the Service Agency maintained that funding piano lessons is a parental responsibility. The Service Agency also pointed out piano lessons are not a specialized service to address Claimant's Mild ID and are not a recognized non-medical therapy. The Service Agency argued there may be therapeutic services such as OT to address Claimant's fine and gross motor challenges, and these OT services are available through generic resources such as Claimant's school district.

15. At the fair hearing, Claimant's mother pointed out that the 2021 statutory change allows regional centers to fund social recreational services and non-medical therapies such as music therapy. Claimant has not yet started piano lessons. However, Claimant's mother believes piano lessons can help achieve Claimant's IPP goals of: (1) improving her fine motor skills and muscle tone through activities; (2) becoming more independent and productive, and having a normal life in the community; (3) being able to approximate the pattern of everyday living of a non-disabled person of the same age; and (4) having opportunities to participate in community life. Claimant's mother asserted that practicing complex skills like piano could help Claimant with her "focus," core stability, body awareness, attention to task, visual imitation, and listening skills.

16. Claimant's mother submitted two medical journal articles which purportedly established the therapeutic benefits of piano lessons for Claimant. However, neither journal article established piano lessons as a non-medical therapy to address Claimant's ID. The first journal article addressed how children's fine motor skills improved with piano lessons. However, the article did not specify the age of study participants, nor whether they were typically developing or intellectually disabled. The second journal article addressed keyboard music training for adults which improved their finger function. There was no evidence in either journal article that piano lessons provided therapeutic improvement for children with ID.

17. The piano lessons for which Claimant seeks funding are available to the general public and are not specialized or tailored for special needs individuals. Claimant's chosen piano teacher will provide one-on-one lessons at Claimant's individual pace. Claimant's mother acknowledged the selected piano teacher is not a licensed therapist and is not certified to provide lessons to individuals with special needs. However, Claimant's mother understands the selected piano teacher has provided lessons to special needs children and is very patient.

18. According to Claimant's mother, Claimant does not receive OT through the school district or private medical insurance.

19. Claimant's mother has requested Claimant's school district fund Claimant's piano lessons to improve Claimant's fine motor and gross motor skills. However, the school district informed her it does not provide such services. Claimant's mother has not yet requested the school district fund general OT for Claimant to improve her gross motor or fine motor skills.

20. Claimant's mother has requested Claimant's private insurance fund Claimant's piano lessons. However, the insurance provider does not fund piano lessons.

21. Claimant did not establish piano lessons are a non-medical therapy proven to address her ID or her IPP goal of improving unidentified fine motor deficiencies. Although Claimant's mother also sought piano lessons as a social recreational activity to allow greater integration into the community, Claimant did not establish that private piano lessons are social recreational activity or specialized services designed to help her meet her IPP goals of approximating a non-disabled

person's pattern of everyday living, leading a more independent and productive life in the community, or having opportunities to participate in community life.

LEGAL CONCLUSIONS

Jurisdiction and Burden of Proof

1. An administrative hearing to determine the rights and obligations of the parties is available under the Lanterman Developmental Disabilities Services Act (Lanterman Act) to appeal a regional center decision. (Welf. & Inst. Code, §§ 4700-4716.) Claimant timely requested a hearing following the Service Agency's denial of funding, and therefore, jurisdiction for this appeal was established.

2. When a party seeks government benefits or services, she bears the burden of proof. (See, e.g., *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefits].) Where a change in services is sought, the party seeking the change bears the burden of proving that a change in services is necessary. (See Evid. Code, § 500.) The standard of proof in this case is a preponderance of the evidence, because no law or statute (including the Lanterman Act) requires otherwise. (See Evid. Code, § 115.)

3. In seeking funding for private piano lessons, Claimant bears the burden of proving by a preponderance of the evidence that the funding is required. Claimant has failed to meet her burden of proving she is entitled to the funding she seeks.

Relevant Provisions of the Lanterman Act

4. A service agency is required to ensure the provision of services and supports to consumers that meet their individual needs, preferences, and goals as

identified in their individual program plan. (Welf. & Inst. Code, §§ 4501; 4512, subd. (b); 4646, subd. (a).)

5. In securing services for its consumers, a service agency must consider the cost-effectiveness of service options. (Welf. & Inst. Code, §§ 4646, subd. (a); 4512, subd. (b).)

6. Additionally, when purchasing services and supports, service agencies are required to ensure the "utilization of generic services and supports when appropriate." (Welf. & Inst. Code, § 4646.4, subd. (a)(2).)

7. Welfare and Institutions Code section 4512, subdivision (b), specifically provides:

"Services and supports for persons with developmental disabilities" means 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 an independent, productive, and normal life. 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.

8. Welfare and Institutions Code section 4646.4 specifically provides, in pertinent part:

(a) Regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's individual program plan developed pursuant to Sections 4646 and 4646.5. . . , 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, as approved by the department pursuant to subdivision (d) of Section 4434.

(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 support needs as provided in the least restrictive and most appropriate setting. In this determination, regional centers shall take into account the consumer's need for extraordinary care, services, supports and supervision, and the need for timely access to this care.

9. Welfare and Institutions Code section 4648, subdivision (a)(8), provides:

In order to achieve the stated objectives of a consumer's individual program plan, the regional center shall conduct activities, including, but not limited to, all of the following:

- (a) Securing needed services and supports. [¶] . . . [¶] (8)

Regional center funds shall not be used to supplant the budget of an agency that has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services.

10. Welfare and Institutions Code section 4648.5, provides:

(a) Notwithstanding any other law or regulations to the contrary, effective July 1, 2009, and ending on June 30, 2021, a regional center's authority to purchase the following services shall be suspended pending implementation of the Individual Choice Budget and certification by the Director of Developmental Services that the Individual Choice Budget has been implemented and

will result in state budget savings sufficient to offset the costs of providing the following services:

(1) Camping services and associated travel expenses.

(2) Social recreation activities, except for those activities vendored as community-based day programs.

(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.

(b) For regional center consumers receiving services described in subdivision (a) as part of their individual program plan (IPP) or individualized family service plan (IFSP), the prohibition in subdivision (a) shall take effect on August 1, 2009.

(c) 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 their home and no alternative service is available to meet the consumer's needs.

(d) This section shall become inoperative on July 1, 2021, and as of January 1, 2022 is repealed.

11. Pursuant to Welfare and Institutions Code section 4648.5, beginning July 1, 2021, the Service Agency is no longer prevented from funding social recreational services and non-medical therapies such as specialized recreation and music therapy. However, the Service Agency's funding of any service must still comport with the remaining provisions of the Lanterman Act.

12. Pursuant to Welfare and Institutions Code sections 4646.4 and 4648, subdivision (a)(8), the Service Agency may not fund services if funding is available from a generic resource such as a school district or medical insurance. In this case, Claimant's school district may be able to fund OT to meet Claimant's IPP goal of improving fine motor and gross motor skills, albeit not in Claimant's preferred format of private piano lessons. Generic resources must be utilized if possible, and Claimant's parent has not pursued school district funding for general OT services to meet Claimant's needs. Consequently, Claimant has not utilized available generic resources to address any gross motor or fine motor deficiencies, such as obtaining OT through her school district, and the Service Agency must not supplant funding available through that generic resource.

13. Additionally, pursuant to Welfare and Institutions Code section 4646.4, in determining Claimant's support needs, the Service Agency must consider parental responsibility for providing similar services and supports for a minor child without disabilities. Although Claimant has characterized the piano lessons as a form of OT, this characterization was not established by the evidence. Therapy is intended to provide treatment of disorders through therapeutic modalities, and OT is a therapy provided by licensed professionals to remediate or rehabilitate identified deficiencies.

Unlike OT, piano lessons are intended to teach music skills on a specific instrument and is an activity available to all individuals. The piano lessons for which Claimant seeks funding are not therapy or specialized services with identified treatment goals to address Claimant's disability. Although the piano lessons may arguably help Claimant's core muscle strength while sitting and her fine motor skills while moving her fingers over the keys, Claimant did not establish that piano lessons were necessary and specifically tailored to address any identified deficits arising from her regional center qualifying diagnosis of ID. While Claimant's selected piano teacher may be willing to go at slower pace for Claimant, this slower paced lesson approach is not a specialized service. Rather, the piano lessons are services provided equally to typically developing children and from which Claimant, like typically developing children, could derive benefits. Consequently, Claimant's parents are responsible for funding Claimant's piano lessons as they would for a minor child without disabilities.

14. Given the foregoing, SGPRC's denial of funding piano lessons for Claimant was appropriate.

ORDER

Claimant's appeal is denied. San Gabriel / Pomona Regional Center's denial of funding private piano lessons for Claimant is upheld.

DATE:

JULIE CABOS-OWEN
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.