

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

v.

CENTRAL VALLEY REGIONAL CENTER,

Service Agency.

OAH No. 2013120063

DECISION

A fair hearing was held on February 6, 2014, before Karen J. Brandt, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, in Fresno, California.

Shelley Celaya, Client Appeals Specialist, represented Central Valley Regional Center (CVRC).

Claimant's mother represented claimant.

Evidence was received, the record was closed, and the matter was submitted for decision on February 6, 2014.

ISSUE

Should the applied behavioral analysis (ABA) services claimant is currently receiving be faded out as recommended by the vendor who is currently providing these services, in accordance with Welfare and Institutions Code section 4686.2, subdivisions (b)(4) and (5)?

FACTUAL FINDINGS

1. Claimant was born in 2005. Next month, he will be nine years old. Claimant is eligible for services and supports from CVRC under the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code section 4500 et seq., based upon a diagnosis of autism. Claimant lives at home with his parents.

2. Claimant is currently receiving a type of ABA services called Early Intensive Behavior Intervention Services from ACES, a CVRC vendor. Claimant first began receiving ABA services funded by CVRC in December 2007. Claimant was referred to ACES in April 2010 for an assessment for services to target excesses and deficits in the areas of behavior, communication, safety skills, self-help skills, and socialization. Claimant received four quarters of parent consultation prior to starting one-on-one direct intervention services. He currently receives 20 hours of one-on-one direct intervention services per week and 16 hours per month of parent consultation and supervision.

3. ACES provides quarterly progress reports to CVRC about claimant's behavior and progress. In its 13th Quarter Progress Report for the period of May 1 through July 31, 2013, ACES included the following summary and recommendation:

[Claimant] is an energetic boy with potential for growth. He has a family who is committed to improving [his] skills.

[Claimant] continues to present with significant deficits in behavior, communication, safety skills, self-help skills, and socialization. [Claimant] is in his 13th quarter of services and has met a total of 26 program goals. It is recommended that [claimant] and his family receive a decrease to 15 hours per week of 1:1 direct services (66 hours per month) with 1500 miles per month for direct services, in addition to 12 hours

per month of consultation and supervision with 300 miles per month for supervision for the 14th quarter.

In the 13th Quarter Report, ACES stated that as “maintenance and generalization of parents’ skills are observed over time, it is expected that direct services will gradually decrease.” The report also stated that this “plan may change in the future if new issues arise and will be adjusted as needed at that time.”

4. ACES included the same recommendation that the ABA services it is currently providing to claimant be reduced in its 14th Quarter Report covering the period from August 1 through October 31, 2013, and in its 15th Quarter Report covering the period from November 1, 2013, through January 31, 2014.

5. Emily Branscum, Ph.D., is a board-certified Behavior Analyst who has been employed by CVRC for 10 years. She has a doctorate in Developmental Psychology. At hearing, she testified that the Early Intensive Behavior Intervention Services that claimant is currently receiving from ACES are a type of ABA services generally offered to young children for two to three years, when they are between the ages of three and seven, to provide them with early learning experiences so that they will develop skills that will enable them to learn in a typical learning environment like a school. Thus, this program is primarily focused upon providing claimant with the ability to learn from an educational environment, not to teach him specific skills. According to Dr. Branscum, after this program ends, the next ABA programs available to claimant will generally focus on skill building and will be provided through claimant’s school district.

6. On January 14, 2014, Dr. Branscum observed claimant for one and one-quarter hours at his school. Based upon her observation, Dr. Branscum concluded that:

...[Claimant] is stable in his learning environment. He has a good grasp of the routine and is able to learn from the classroom environment. It was clear in this observation that

[claimant] responds better to highly-structured teaching settings with specific direct instructions; all common requirements for children diagnosed with autism. [Claimant] did not display aggression even in situations where aggression would be a common response for children diagnosed with autism. This observation did not indicate a need for further intensive behavior programming.

7. Dr. Branscum supported ACES's recommendation that it is now time for claimant's current ABA program to be gradually faded out, and for claimant to proceed to the next level of ABA skill-building program available through his school district. Claimant is currently receiving 20 hours per week of one-on-one direct behavior intervention services with a behavior specialist in his home. In addition, ACES provides claimant's parents with 16 hours a month of consultation services, which are focused upon teaching claimant's parents to deliver instruction to claimant. Dr. Branscum recommended that the 20 hours of one-on-one direct services be reduced to 15 hours per week in the next quarter, and that these 15 hours gradually be faded out over the subsequent one or two quarters. She also agreed that the consultation hours should be gradually reduced from 16 to 12 hours per quarter, and then gradually faded out, with all the consultations during the last quarter being parent-initiated. Dr. Branscum testified that, even after the current ABA program is faded out, claimant's parents may still receive behavioral services, both during and after the fade out, as needed to address specific behaviors.

8. Claimant's mother opposes the fading out of claimant's current ABA program. She testified that claimant engages in self-injurious behaviors. She testified further that he is very aggressive towards his siblings, and that he tries to escape when his tutor works with him. He is not brushing his teeth properly or dressing himself. He

cannot stand to hear loud lawnmowers or other machines. He is not aware of his safety when he crosses the street. He refuses to eat new foods. He hurts himself whenever his schedule is changed. His mother believes that he still needs the current program to prevent him from injuring himself and his siblings, and to allow him to be more independent.

9. Claimant's parents did not submit any testimony, reports or documentation from a behavior analyst or other expert to contradict the recommendations made by both ACES and Dr. Branscum.

DISCUSSION

10. While the concerns of claimant's mother about claimant's on-going behaviors are understandable, both ACES and Dr. Branscum believe that claimant has generally met the goals and objectives of his existing Early Intensive Behavior Intervention Services ABA program. The reports from ACES and the observations and opinions of Dr. Branscum support that there would be little further benefit to claimant if he continues with the current program. It is now time for him to transition to a skill-building ABA program better suited to his age, current needs, and stage of development. The existing program should be gradually faded out over time in accordance with ACES's recommendations and Dr. Branscum's testimony.

LEGAL CONCLUSIONS

1. In accordance with the Lanterman Act, regional centers fund services and supports for eligible persons with developmental disabilities to enable them to

“approximate the pattern of everyday living available to people without disabilities of the same age.” (Welf. & Ins. Code, § 4501.¹)

2. Section 4686.2 governs the provision of ABA services to eligible regional center consumers. Subdivision (a)(2) of this section required that vendors of ABA services shall “[d]esign an intervention plan that shall include the service type, number of hours and parent participation needed to achieve the consumer’s goals and objectives, as set forth in the consumer’s individual program plan (IPP) or individualized family service plan (IFSP). The intervention plan shall also set forth the frequency at which the consumer’s progress shall be evaluated and reported.” In compliance with section 4686.2, subdivision (a)(2), ACES designed an intervention plan to provide ABA services to claimant and his parents.

3. Section 4686.2, subdivision (b), in relevant part provides:

Effective July 1, 2009, notwithstanding any other provision of law or regulation to the contrary, regional centers shall:

[¶] ... [¶]

(4) Discontinue purchasing ABA or intensive behavioral intervention services for a consumer when the consumer’s treatment goals and objectives, as described under subdivision (a), are achieved. ABA or intensive behavioral intervention services shall not be discontinued until the goals and objectives are reviewed and updated as required in paragraph (5) and shall be discontinued only if those

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

updated treatment goals and objectives do not require ABA or intensive behavioral intervention services.

(5) For each consumer, evaluate the vendor's intervention plan and number of service hours for ABA or intensive behavioral intervention no less than every six months, consistent with evidence-based practices. If necessary, the intervention plan's treatment goals and objectives shall be updated and revised.

4. As set forth in the Findings, CVRC established that claimant has generally met the goals and objectives of his current Early Intensive Behavior Intervention Services ABA program. In accordance with section 4686.2, subdivision (b), the services provided under this program should gradually be faded out.

ORDER

Claimant's appeal is DENIED. Claimant's current Early Intensive Behavior Intervention Services ABA program shall be gradually faded out. Beginning the next quarter, the one-on-one direct behavior intervention services shall gradually be reduced from 20 to 15 hours per week, and the consultation services shall gradually be reduced from 16 to 12 hours per month. Over the subsequent two quarters, the one-on-one direct behavior intervention services shall gradually be faded out. The consultation services shall remain at 12 hours per month for these subsequent two quarters, but during the second of these two quarters, the consultation services shall be provided only at the initiation of claimant's parents. At the end of this subsequent second quarter, the consultation services shall cease. Central Valley Regional Center may extend these time periods and hours as recommended by its Behavior Analyst or ACES. Both during and after the fade-out period, claimant's parents may request behavioral services from

Central Valley Regional Center to address specific behavioral issues on an as-needed basis.

DATED: February 11, 2014

KAREN J. BRANDT

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of the decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)