

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of the Fair Hearing Request  
of:

OAH No. 2014020931

ANDREW L.,

Claimant,

and

EASTERN LOS ANGELES REGIONAL CENTER,

Service Agency

## DECISION

This matter came on regularly for hearing on April 4, 2014, at Alhambra, California before David B. Rosenman, Administrative Law Judge, Office of Administrative Hearings, State of California. Claimant Andrew L. was represented by his mother. (Initials and titles are used to protect confidentiality.) Eastern Los Angeles Regional Center (ELARC) was represented by Lee Strollo, Supervisor, Family Services Unit, ELARC.

Oral and documentary evidence was presented and the matter was submitted for decision on April 4, 2014.

## ISSUE

The parties agreed the issue is whether ELARC should fund for Claimant's parents to attend the August 2014 conference on the Masgutova Method.

## FACTUAL FINDINGS

The Administrative Law Judge finds the following facts:

1. Claimant is a 14-year-old boy eligible for services from ELARC based on his diagnosis of autism. Claimant began receiving services at about one year of age. As indicated in his last Individual Program Plan (IPP) dated May 28, 2013, he is receiving the following services funded by ELARC: respite, adaptive skills training of 30 hours per month by Holding Hands, and social skills training of ten hours per month by Progressive Resources.

2. On January 28, 2014, ELARC denied the request of Claimant's parents for funding to attend a conference on the Masgutova Method to take place in March 2014. Claimant's mother submitted a Fair Hearing Request dated February 12, 2014. At the hearing, it was agreed to modify the request so it would relate to a conference scheduled for August 2014.

3. Many documents were submitted in evidence related to the Masgutova Method, developed by Dr. Svetlana Masgutova, a clinician of Russian background and education. Dr. Masgutova traveled to the United States to provide educational programs and clinics in her methods, referred to as neurosensomotor reflex integration. Dr. Masgutova has since relocated to Florida, and still travels for the clinics. In summary, her method is based on the theory that certain motor reflexes are missing or not fully developed during the development of autistic children, and that by training the child to experience and complete the development of these motor reflexes, the deficits due to autism can be substantially reduced. The clinics identify which reflexes need to be addressed and provide training to parents, by lecture and often by hands-on work with their children.

4. Claimant and/or his parents have attended some of the clinics and seminars. The first was in July 2009 and was an eight-day course. The cost was \$8,500. ELARC denied the request for funding and during a fair hearing the parties agreed that ELARC would fund half, i.e., \$4,250. For a second conference, a five-day course in August 2009 at a cost of \$725, ELARC denied funding to reimburse the parents. Its decision was upheld at a fair hearing, because the parents did not submit sufficient proof of the cost of the training or

that they had paid for it. Parents wanted to attend a 10-day conference in January 2010 at accost of \$8,000. Parents received a scholarship and paid the reduced cost of \$2,000, without any request for ELARC reimbursement. Mother was an organizer for a four-day conference in September/October 2011 and was able to attend at no charge. Parents attended a five-day course in February and March 2012, at a cost of \$726, for which ELARC denied funding. Parents attended two days of a longer clinic in February 2014, for which they paid \$1,100 for assessment and treatment.

5. Many of the descriptions of the subjects covered at these clinics and educational sessions are similar or identical. (Exs. G, 7, and 11.) ELARC contends that they are duplicative. This contention is rejected based on mother's credible testimony. In summary, some are purely educational sessions. Others include an assessment of the child, the development of a treatment plan, and hands on implementation of the treatment under supervision. Mother explained that Claimant was very passive at first and, therefore, many of the possible treatments could not be implemented. As Claimant progressed, there have been added treatments as well as plans to add further treatment in the future. Some limitations of Claimant's abilities at the beginning have been overcome, and there are many components of the Masgutova Method that can be implemented in the future. Mother estimated she has used only 50 percent of subjects in which she was trained, and that there are more subjects for training as Claimant progresses. As a result, Claimant's parents want to get continually retrained in the Masgutova Method or get trained in differing aspects of the Masgutova Method.

6. In the two days of the clinic they attended in February 2014, Claimant was assessed by Dr. Masgutova. The assessment report is expected but has not yet been received. Exhibit 9 includes a two-page home program from the February 2012 clinic listing 38 pre-printed "reflex patterns/techniques" with corresponding "functions," for which 28 have specific references to Claimant. For example, number 3, "hands pulling" has de-

scribed functions of "communication , speech, hand-eye coordination and convergence." Home exercises are to be performed three times per week. Number 8, "Leg cross, flexion/extension" has described functions of "cross gross motor programming and control, limbs differentiation, balance, equilibrium" with home exercises to be performed three times per week. The February 2014 clinic included other programs and exercises as well. Claimant's parents implemented prior home programs and this recent home program. They spend approximately two hours per day on it. Claimant enjoys it and often asks for it.

7. ELARC contends that it cannot provide funding for the clinics and the Masgutova Method because it is an experimental therapy and it is an educational service. At the hearing, ELARC also contended that it is not cost-effective.

8. After a period of home schooling, Claimant recently returned to the public school and transitioned into eighth grade late last year. He attended summer school and is now in ninth grade. The school district provides the following special services: speech and language therapy two times per week, 30 minutes each, and 30 minutes per month of occupational therapy. Claimant also receives 181.9 hours per month of In-Home Supportive Services (IHSS), reduced from 283 hours in July 2009. Claimant's mother believes the reduction was in part because Claimant demonstrated more capabilities.

9. Claimant's parents have become trained in many therapies. Several years ago, Claimant's progress was slow. Claimant would become stressed and engage in behaviors that included self-injury, hitting and tearing his clothes. Presently, Claimant has better self-regulation and has improved in the various services and therapies provided.

10. The school district declined funding for the Masgutova Method. In a notice dated March 12, 2014, the district noted that the services it is providing meet Claimant's educational needs, relying on an occupational therapy assessment performed on March 7, 2014. (Ex. 8.) Claimant's mother agrees that the school district's services assist Claimant in accessing his educational program.

11. Katie Bernal, a speech and language pathologist, worked with Claimant for over seven years when she wrote a letter of support on January 12, 2011. In her opinion the Masgutova Method was a significant factor in his recent progress. (Ex. 2.) Similarly, Susan Hollar, a speech pathologist, noted that the Masgutova Method integrated well with Relationship Development Intervention (RDI) she had been providing, resulting in gained skills and reduction in symptoms. (Ex. 2.) An evaluation for RDI/floortime was prepared by Andrea Davis, Ph.D., on October 29, 2010. Based on information from Claimant's mother, Dr. Davis noted that Claimant had shown great improvement in his ability to communicate and a commensurate reduction in frustration based in part on the Masgutova Method, and recommended that it should be supported and increased. (Ex. 2.)

12. Progress reports were submitted from Holding Hands relating to the DIR/floortime services and from Progressive Resources for adaptive skills training. Claimant has made consistent progress in the last three years. He has graduated at Progressive Resources from an individual program to a group program. Claimant's mother is often involved in these programs' services, and both parents are very active in training Claimant at home.

13. Among other things, Claimant's mother contends that the Masgutova Method is not experimental because it meets the continuing education requirements of professional organizations relating to occupational therapy, speech and language therapy, physical therapy and therapeutic massage and bodywork. She submitted numerous references to the Masgutova Method from internet articles, posts and websites.

14. Angela Espinoza Puopolo (Puopolo) is an occupational therapist at ELARC. She performed a record review and wrote a report dated July 23, 2010 (Ex. F) expressing her opinion that the Masgutova Method is not recommended for treating autism. She could find no evidence-based research supporting the Masgutova Method and had contacted thirteen listed therapists and researchers who were not aware of the Masgutova

Method and would not recommend it. In two later reports, both dated February 12, 2014 (Exs. E and J), Puopolo notes there is no objective report of Claimant's progress in the Masgutova Method, and that Claimant may have also benefited from recent assistance with facilitated communication, maturation, and other services. Puopolo considers the Masgutova Method to be experimental.

15. With respect to cost-effectiveness, the average conference cost funded by ELARC in the 2008-2009 fiscal years was \$470. ELARC proposed to pay this for the July 2009 conference. After a fair hearing was requested, the parties resolved the matter when ELARC offered to pay \$4,250, half of the cost. Claimant's mother contends that the conferences are cost effective for two reasons. A five-day camp, at a cost of \$5,950 for both parents to attend, computes to \$595 per day per parent, or \$85 per hour.

16. Under the facts and circumstances presented at the hearing, it is certainly possible, and maybe probable, that the Masgutova Method is partly or largely responsible for many of Claimant's gains. It is equally likely that Claimant's other therapies contributed to that progress, which was augmented or accelerated by the Masgutova Method. However, there was no objective proof of what part the Masgutova Method played. Further, all of Claimant's identified needs are being met by ELARC and school district services. There is no unmet need.

## LEGAL CONCLUSIONS AND DISCUSSION

Based upon the foregoing factual findings, the Administrative Law Judges makes the following legal conclusions:

1. Proper jurisdiction was established by virtue of ELARC's denial of the request for funding and the Fair Hearing Request on behalf of Claimant. (Factual Findings 1 and 2.)
2. The standard of proof in this case is the preponderance of the evidence, be-

cause no law or statute (including the Lanterman Act<sup>1</sup>) requires otherwise. (Evid. Code, § 115.) The burden of proof is on the person whose request for government benefits or services has been denied. (See, e.g., *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 (disability benefits).) Claimant has the burden of proof in this matter.

3. ELARC contends that the Masgutova Method is experimental. In denying funding ELARC relies on section 4648, subdivision (a)(15), which states in pertinent part:

“Notwithstanding any other provision of law or regulation to the contrary, effective July 1, 2009, regional centers shall not purchase experimental treatments, therapeutic services, or devices that have not been clinically determined or scientifically proven to be effective or safe or for which risks and complications are unknown.”

4. Claimant did not produce sufficient evidence to counter the opinion of ELARC’s occupational therapist that the Masgutova Method is experimental. The various organizations granting continuing education credit, and the various references to the Masgutova Method in articles and websites, do not sufficiently establish that the Masgutova Method is an evidence-based therapy that has sufficient recognition in the professional community. (Factual Findings 3-7, 11, 13 and 14.)

5. ELARC did not establish that the Masgutova Method is an educational service and, therefore, the primary responsibility of Claimant’s school district. ELARC believed that it was appropriate for an occupational therapist to review the request for funding, and many of the items listed on the Masgutova Method home program for Claimant contain elements of occupational therapy. The school district is providing occupational therapy for Claimant. However, occupational therapy is not the sole responsibility of the school dis-

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<sup>1</sup> All statutory references are to the Welfare & Institution Code, except where otherwise noted. Section 4700 et seq. is known as the Lanterman Developmental Disabilities Services Act, Lanterman Act for short.

trict. Occupational therapy is one of the services that can be provided under the Lanterman Act and is specifically listed in the definition of available “services and supports” in section 4512, subdivision (b). (Factual Findings 3-10.)

6. Numerous references to cost-effectiveness are found in the Lanterman Act. (See, for example, §§ 4512, subd. (b), 4646, 4648, subd. (a)(11), 4669.2, subd. (b), and 4685.) ELARC did not establish that the Masgutova Method is not cost-effective. While the total cost of a clinic may be thousands of dollars, Claimant’s mother’s computations established that the cost per day is not substantially more than ELARC’s claim of the average cost for parent training conferences. It is not known if those other conferences lasted less than one day, a full day, or multiple days. Therefore, the ELARC average is not an accurate measure of cost-effectiveness. (Factual Findings 3-7, and 15.)

7. ELARC’s decision to deny funding for the Masgutova Method is confirmed, based on the lack of scientific evidence of the efficacy of the Masgutova Method generally, and the lack of objective evidence that it is a necessary service for Claimant.

## ORDER

ELARC’s decision to deny funding for the Masgutova Method is confirmed.

DATED: April 18, 2014.

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DAVID B. ROSENMAN  
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.