

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

EDUARDO U.

Claimants,

vs.

SOUTH CENTRAL LOS ANGELES
REGIONAL CENTER,

Service Agency.

OAH Case No. 2012020554

2012020553

DECISION

Chris Ruiz, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter at the South Central Los Angeles Regional Center, in Los Angeles, on May 9, 2012.

Eduardo U. (Claimant) was represented by Pamela P., his mother (mother).¹

Johanna Arias, Fair Hearing Coordinator, represented South Central Los Angeles Regional Center (SCLARC or the service agency).

Oral and documentary evidence was received and argument made. The record was closed and the case was submitted for decision on May 9, 2012.

The two cases were consolidated for hearing.

¹ Claimant and his family are referred to by their initials or family titles to protect their confidentiality.

ISSUES

The following issues are to be decided by the ALJ:

1. Shall the service agency be ordered to fund "Alma Family Service" (Alma) for Claimant?
2. Shall the service agency be allowed to discontinue funding for "Milestones Behavior Management Program" (MS) for Claimant?

FACTUAL FINDINGS

1. Claimant is a 12 year-old boy (Claimant or Eduardo) who is a consumer of the service agency by reason of his diagnosis of autism. Claimant filed his fair hearing requests on February 14, 2012.

2. Claimant attends MS after his school day. He began attending MS in September 2010 after he suffered a reported sexual abuse in May 2010. Claimant contended that the initial funding of MS was to address Claimant's "inappropriate touching" of others and himself. These inappropriate behaviors began after the May 2010 incident. The service agency contended that Claimant's behavior in this area improved such that the services of MS are no longer necessary. However, the service agency's "Purchase of Service" form (POS), which authorized funding for MS and which was dated August 17, 2010, also indicated that the following areas, in addition to the inappropriate touching, were to be addressed by MS: disruptive social behavior, self-injurious behavior, and running or wandering away.

3. As such, it was not established that Claimant's behavior in the area of inappropriate touching is, in and of itself, conclusive in determining whether or not funding for MS services should be discontinued.

4. Currently, the incidence of "touching" behaviors has declined. MS also has provided behavioral training, and established goals, in the following categories: non-

compliant behavior, wandering away, social relationships, functional communication, personal appearance, safety awareness, and money management.

5. As recently as March 2012, claimant was suspended from school because he disrobed in class, urinated on his teacher, and threw a shoe at his teacher.

6. Mother would like claimant to attend Alma. As her second choice, she would like funding for MS to remain in place.

7. Welfare and Institutions Code section 4648.5 states:

(a) Notwithstanding any other provision of law or regulations to the contrary, effective July 1, 2009, a regional centers' 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 his or her home and no alternative service is available to meet the consumer's needs.

8. The service agency initially authorized funding for MS as an exemption, which is described above in Welfare and Institutions Code, section 4648.5, subdivision (c). The service agency's specific basis for its conclusion regarding the exemption was not established from the evidence.

9. Claimant has made substantial progress at MS. His deficits in the area of inappropriate touching have significantly improved. However, it was not established that funding for MS should be eliminated. Claimant's overall needs require that funding for MS remain in place. The most current report from MS, dated February 16, 2012, recommends that Claimant continue attending MS. Further, the service agency did not provide sufficient evidence to support its contention that funding for MS should be discontinued. For example, the service agency did not obtain a functional behavioral analysis or have Claimant evaluated by a behavioral therapist, so as to determine his present needs and deficits in the area of behavior management.

LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Act (Lanterman Act) governs this case. (Welfare and Institutions Code sections 4500 et seq.)² A state level fair hearing to determine the rights and obligations of the parties, if any, is referred to as an appeal of the service agency's decision. Claimants properly and timely requested a fair hearing and therefore jurisdiction for this case was established. (Factual Findings 1-2.)

² All further statutory references are to the Welfare and Institutions Code.

2. Where a claimant seeks to establish the propriety of a service not previously agreed to by the service agency, the burden is on that appealing claimant to demonstrate the service agency's decision is incorrect. Where the service agency seeks to discontinue a service it has previously funded, the service agency has the burden to demonstrate that its decision is correct. Where the consumer seeks a new service, the burden is on the consumer. In this case, the service agency had the burden of establishing that funding for MS is no longer appropriate. Claimant had the burden of establishing that Alma is appropriate and necessary. Both parties failed to meet their burdens.

3. Code section 4648.5 (new law) was recently enacted by the State Legislature. The Legislature decided, in part, how the State will spend its limited resources. Subdivision (a)(2) clearly states that social/recreational programs, and/or nonmedical therapies (subdivision (a)(4)) may no longer be funded by the regional center, unless the consumer can establish that an exemption exists because of "extraordinary circumstances," which are defined as "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 his or her home and no alternative service is available to meet the consumer's needs." The service agency initially determined that an exemption applied and therefore the new law did not prohibit funding of MS. The service agency did not establish that the exemption no longer applies. (Factual Findings 1-8.)

4. Section 4501 requires the state, through the regional centers, to provide an array of services and supports which is sufficiently complete to meet the needs and choices of each person with developmental disabilities. These are services and supports that will allow them, "regardless of age or degree of disability, and at each stage of life"

to integrate “into the mainstream life of the community” and to “approximate the pattern of everyday living available to people without disabilities of the same age.” Persons with developmental disabilities have the right to treatment and habilitation services and supports which foster the individual’s developmental potential and are “directed toward the achievement of the most independent, productive and normal lives possible.” The regional centers will work with consumers and their families to secure “those services and supports that maximize opportunities and choices for living, working, learning and recreating in the community.” (§ 4502.)

5. Section 4646.5 defines the content of the planning process for the Individual Program Plan (IPP). It must include a statement of goals based on the consumer’s needs and time limited objectives for implementing the goals. The goals and objectives should maximize opportunities for the consumer to develop relationships, be part of community life and to develop competencies to help accomplish the goals. The IPP process must also include a schedule of the type and amount of services and supports to be purchased by the regional center or obtained from generic agencies or other resources in order to achieve the IPP goals and the identification of the providers of services.

6. Section 4646 states:
- a. It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual. . . . It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program, reflect the preferences and choices of the consumer, *and reflect the cost-effective use of public resources. (Emphasis added.)*

b. The individualized program plan is developed through a process of individualized needs determination

7. Section 4648 describes what the regional center must do in order to achieve the stated objectives of the IPP. In securing the needed services and supports for a consumer the regional center must find services that are flexible and individually tailored to the consumer. By vendorization or contract the service agency may purchase services from any individual or agency the regional center and consumer determines will best accomplish all or any part of the IPP.

8. Services provided must be cost-effective (§ 4512, subd. (b)), and the Lanterman Act requires the regional centers to control costs so far as possible, and to otherwise conserve resources that must be shared by many consumers. (*See, e.g.*, §§ 4640.7, subd. (b), 4651, subd. (a), 4659, and 4697.) However, section 4659 specifies that it shall not be construed to impose an additional liability on the claimants with developmental disabilities nor to restrict eligibility for or deny services to a consumer who is unable to pay. To be sure, the obligations to other consumers are not controlling in the decision-making process, but a fair reading of the law is that a regional center is not required to meet a claimant's every possible need or desire, in part because it is obligated to meet the needs of many claimants.

9. There is nothing in the Lanterman Act which gives consumers the absolute right to pick a desired vendor. However, a consumer's preference should not be ignored. Claimant did not establish that MS has not, or can not, adequately meet his needs. In fact, Claimant has shown substantial improvement while attending MS. While Alma may be a "better" facility, or more desirable to Claimant, the service agency has the authority to choose a vendor that it determines is able to meet Claimant's needs. (Factual Findings 3-9.)

