

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

RENE S.

Claimant,

OAH Case No. 2012020933

vs.

SOUTH CENTRAL LOS ANGELES REGIONAL
CENTER,

Respondent.

DECISION

Administrative Law Judge Amy C. Yerkey, State of California, Office of Administrative Hearings, heard this matter on May 18 and 30, 2012, in Los Angeles, California.

Justina G. and Rene S. represented their son, Diego Rene S.¹ (Claimant).

Johanna Arias-Bhatia, Fair Hearing and Government Affairs Manager, represented South Central Los Angeles Regional Center (SCLARC or Service Agency or Regional Center).

The matter was submitted for decision on May 30, 2012.

ISSUE

The question to be decided in this matter is whether SCLARC may reduce funding of in-home behavior management services from 24 to 18 hours per month, and for how

¹ Initials have been used to protect Claimant's privacy.

long this service should continue. In addition, whether Claimant's service program should include behavior management, skills training and parent supervision and consultation.

FACTUAL FINDINGS

1. Claimant is a seven-year-old boy who qualifies for regional center services based on an autism diagnosis.

2. On February 8, 2012, the Service Agency served Claimant with a Notice of Proposed Action, seeking to reduce funding of in-home behavior management services from 24 to 18 hours per month. The stated reason for the decision was due to Welfare and Institutions Code section 4512, subdivision (b) and 4646, subdivision (a). Claimant timely filed a fair hearing request.

3. Immediately prior to the hearing, and during the hearing, Regional Center agreed that Claimant should continue to receive 24 hours per month of services. The parties disputed for how long the service should continue. Regional Center argued that in three months, Claimant should be reassessed to develop a fade plan. Claimant's parents request that the service continue for as long as necessary to meet Claimant's needs. In addition, Claimant's parents want the service provider to have discretion to use the 24 monthly hours to address Claimant's needs, whether it be for skills training, behavioral intervention or otherwise. Ultimately, Regional Center agreed that the vendor should have discretion to tailor Claimant's program to meet his needs, provided that the services remain under the general umbrella of behavior modification. Claimant's parents also want to ensure that they continue to receive at least 10 hours per month of parent supervision and consultation. Regional Center agreed to this request.

4. Claimant's Service Coordinator, Heidi Zander (Zander), testified at the hearing. She visited Claimant in his home in July 2011, and personally observed Claimant engage in many maladaptive, violent, aggressive behaviors. Zander noted these behaviors in Claimant's Individual Program Plan (IPP), dated July 7, 2011.

5. In making its initial determination to reduce Claimant's behavioral service hours and deny other services, Service Agency relied on the opinions of Bruce Williams, Ph.D., who testified at the hearing. Dr. Williams interpreted Claimant's parents request for services as Discrete Trial Training (DTT), and contended that providing DTT services was the school district's responsibility. Dr. Williams also contended that he did not believe that Claimant needed more than 12 hours per month of behaviors services, although he ultimately agreed to maintain the current level of 24 hours per month. The evidence did not support Dr. Williams' conclusion that Claimant's behavior services should be reduced or restricted to certain topic areas. Dr. Williams has never evaluated Claimant, despite numerous requests by Claimant's mother. Moreover, all other professional evaluations, as described below, have indicated the need for Claimant to augment his behavior services in order to properly address his needs. Dr. Williams's testimony is not credited and is given very little weight.

6. Svetlana Rabinovich (Rabinovich), Psy.D., testified at the hearing. Dr. Rabinovich is the Supervising Clinical Psychologist at the Institute for Applied Behavior Analysis (IABA). Dr. Rabinovich personally observed Claimant in his home on May 2, 2012. She observed Claimant's maladaptive behaviors, and noted that Claimant's mother did a great job of implementing the strategies that she has learned. Dr. Rabinovich opined that the behavior services Claimant has received have helped to manage his behaviors to an extent. In order for him to progress, Dr. Rabinovich opined that Claimant needs intervention at a level greater than what his parents alone can provide, as part of a comprehensive intervention. She opined that Claimant will regress if his services are decreased. Dr. Rabinovich expressed concern that Claimant has not yet received any comprehensive behavioral services, and he is almost eight years old. She opined that a comprehensive behavior plan will help Claimant develop better self-help and communication skills, as well as address his other deficit areas. The services that Claimant

currently receives are part of a comprehensive program, but not sufficient to address all of his needs.

7. Lori Murray (Murray), IABA Manager for Child and Adolescent Services, testified at the hearing. She opined that Claimant's current program is not comprehensive. Murray thinks that if Claimant receives appropriate intervention now, it will increase the chance that he will not need intervention in the future. She stated that intensive intervention earlier will provide the best possible outcome for Claimant.

8. Elizabeth Hughes, Ph.D., IABA Director of Child and Adolescent Services, testified at the hearing. She explained that applied behavioral analysis (ABA) would help Claimant with his maladaptive behaviors that are still present. Dr. Hughes opined that maintaining Claimant's level of services at 24 hours per month is adequate, provided that it is part of a comprehensive package. Dr. Hughes opined that in order to properly treat Claimant, he should receive 60 hours per month of DTT, 24 hours per month of one-to-one ABA, and 10 hours per month of parent supervision and consultation. Dr. Hughes explained that previously, Service Agency, and more specifically, Dr. Williams, had restricted IABA from providing anything other than parent consultation services. She explained that this wasn't sufficient to meet Claimant's needs because parent consultation is specific, and Claimant needs a broad-spectrum approach which includes DTT, ABA, adaptive skills training, and parent consultation and supervision.

9. Claimant's mother testified at the hearing. Claimant is not toilet-trained, and has no self-care skills. He has difficulty communicating, and engages in behaviors such as hitting, kicking, pushing and crying. He also has sleeping problems, and safety awareness issues. He also has a lot of behavior that Claimant's parents do not understand. Claimant's parents are dissatisfied with the amount of assistance that regional center has offered since they first discovered Claimant's disability when he was three years old. They have been trying to get ABA since 2009. (See Exh. C.) They have engaged in a protracted battle

with SCLARC, which included gaps in services to Claimant. Claimant's mother noted that Claimant's family has sought multiple independent evaluations at their own expense, and all experts agree that Claimant should receive ABA services at home.

10. Claimant's father testified at the hearing. He is concerned about Claimant entering puberty, and does not want him to develop other issues (e.g., social and sexual). He explained that Claimant has difficulty with association and generalizing things he has learned. Claimant's father is concerned about his social skills outside of school. He thinks that Claimant needs one-on-one intervention, which he and Claimant's mother would reinforce. Claimant's father noted that Claimant has regressed during summer breaks and vacations; e.g., he will not want to sit down and focus, and it takes him about a month to adjust. Claimant throws temper tantrums, and stomps and kicks to the point that he recently twisted his ankle. Claimant's parents do not know how to stop it. Claimant's father noted that Claimant responds well to the therapist. Claimant's father thinks that Claimant is very smart and has the capacity to learn. Claimant's father also noted that regional center has provided very little support to Claimant and his family over the years. Claimant's father noted that they have sought opinions from the most respected hospitals in the country, for example, Children's Hospital. The independent doctors that have evaluated Claimant all recommend the same services; that is, he needs a comprehensive service package.

11. Claimant's parents submitted multiple independent assessments and observations of Claimant. (Exhs. A and F through P.) Notably, Susan Schmidt-Lackner, M.D., evaluated Claimant on February 14, 2012. Dr. Schmidt-Lackner is a psychiatrist, and an Associate Professor at UCLA and is the Medical Director of the Childhood Treatment Program at UCLA. She has extensive experience in assessing and treating children with autism. Dr. Schmidt-Lackner stated that "[Claimant's] behavioral disturbance has been increasing dramatically. She recommended that Claimant receive 15 hours of one-to-one applied behavior analysis direct care services per week in the home setting. She explained

that Claimant “needs the one-to-one repetitive drilling mode of this intervention to acquire basic readiness to learn skills, including increased compliance, increased joint attention, sitting, increased receptive and expressive language, increased safety awareness and self-regulation, and the beginnings of generalization.” In addition, Dr. Schmidt-Lackner recommended parent training for Claimant’s parents.

12. In a hearing which occurred immediately prior to the instant hearing, Claimant’s parents requested and were awarded 15 hours per week DTT. (See OAH Case No. 2012020502.)

LEGAL CONCLUSIONS

1. Cause exists to grant Claimant’s appeal and reverse SCLARC’s decision to reduce Claimant’s in-home behavior management services from 24 to 18 hours per month, as set forth in Factual Finding numbers 1 through 12, and Legal Conclusion numbers 2 through 5, below.

2. The Lanterman Developmental Disabilities Services Act (Lanterman Act), incorporated under Welfare and Institutions Code section 4500 et seq., acknowledges the state’s responsibility to provide services and supports for developmentally disabled individuals. It also recognizes that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (Welf. & Inst. Code, § 4501.)

3. The Lanterman Act also provides that “[t]he 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.” (Welf. & Inst. Code, § 4512, subd. (b).)

4. The Lanterman Act states “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 with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. 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 plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.” (Welf. & Inst. Code, § 4646, subd. (a).)

5. Applying those provisions here, Claimant’s appeal must be granted. SCLARC did not demonstrate that its decision to reduce Claimant’s behavior management services was supported by the evidence. The evidence showed that Claimant’s current services, in addition to other services, are necessary in order to address his issues. In addition, by allowing Dr. Williams to restrict the behavioral services provided to Claimant, SCLARC failed to comply with the IPP procedures set forth in the Lanterman Act, which requires collaboration by Claimant’s family and service providers. Given the difficulties that Claimant’s parents have encountered, and the gaps in service which have impacted Claimant, the current level of services shall remain in place for at least one year from the date of this order.

ORDER

Claimant’s appeal is granted. South Central Los Angeles Regional Center’s decision to reduce Claimant’s behavioral service hours is reversed.

Within 30 days from the date of this Order, SCLARC is ordered to begin providing 10 hours per month parent supervision and consultation, in addition to the 24 hours per month of in-home behavior management services that Claimant is receiving. IABA, or the relevant service provider shall have discretion to tailor the program to meet Claimant's needs, provided that the services remain under the umbrella of behavior modification. These services shall remain in place at least one year from the date of this Order.

Dated: June 8, 2012

AMY C. YERKEY
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter and both parties are bound by this Decision. Either party may appeal this Decision to a court of competent jurisdiction within 90 days.