

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

J.M.,

Claimant,

vs.

SAN DIEGO REGIONAL CENTER,

Service Agency.

OAH No. 2012030754

DECISION

This matter came on regularly for hearing before Administrative Law Judge Roy W. Hewitt, Office of Administrative Hearings, at San Diego California on May 10, 2012.

The San Diego Regional Center (agency) was represented by Ronald R. House, Esq. Claimant was represented by his mother.

Oral and documentary evidence was received and the matter was submitted on May 10, 2012.

ISSUE

Is the agency in compliance with claimant's current Individual Program Plan (IPP) and the Administrative Law Judge's decision in Office of Administrative Hearings Case number 2009091102, concerning provision of socialization skills-building training to claimant?

FACTUAL FINDINGS

1. Claimant is a 14-year-old male who qualifies for agency services based on a diagnosis of Autistic Disorder (autism).

2. In 2009, the agency sent claimant a Notice of Proposed Action advising him that his social recreation program with the Community Coaching Center (CCC) located in San Diego, California was being discontinued as a result of passage of Welfare and Institutions Code section 4648.5, subdivision (a).¹

3. Claimant appealed the proposed denial of social recreation services and the matter went to hearing on October 27, 2009. The ALJ who presided over the hearing concluded that claimant fell within the exemption subsection of Health and Safety Code section 4685.5.² Consequently, the resulting decision contained the following order: "The

¹ Welfare and Institutions Code section 4648.5, subdivision (a) provides, in pertinent part:

- (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:
- (2) Social recreation activities. . .

² Health and Safety Code section 4648.5, subdivision (c) provides:

- (c) An exemption may be granted on an individual basis in extraordinary circumstances to permit purchase of a service identified in subdivision (a)

claimant's appeal of the regional center's decision to discontinue funding for the claimant's social recreation program is hereby granted." Pursuant to the order, the agency continued funding claimant's social recreation program with CCC as the provider.

4. While participating in the CCC program claimant broke his arm and his mother (mother) became disenchanted with the CCC program. Therefore, she withdrew claimant from the CCC social recreation program and sought a replacement program from the agency.

5. Currently, claimant is receiving social recreation services, in the form of Social-Sexual Skill Acquisition Training with the Behavior Therapy and Family Counseling Clinic (Barmann). Barmann is vendored to provide social recreation services to agency clients. Additionally, claimant receives social recreation services from the school district. Originally, claimant was receiving social recreation services through Barmann at the rate of 30 hours in a six month period of time. However, based on a recommendation from Barmann, claimant's social recreation hours were doubled, to 60 hours in the six month period from May 1, 2012, to October 31, 2012.

6. After claimant suffered an arm injury while attending the CCC program, mother withdrew him from the program and began looking for another program. Mother enrolled claimant in Social Communication Specialists (SCS) and claimant began receiving "Social Thinking Services." Claimant is progressing well with the help of that training and mother wants the agency to fund claimant's SCS program.

7. Agency personnel investigated claimant's request that SCS services be

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.

funded as social recreation services and discovered that SCS is not vendored as a social recreation provider; rather, SCS is vendored to render speech pathology services. Consequently, the agency can not use SCS to provide social recreation services to claimant. The agency so notified claimant's mother, she appealed from the agency's refusal to fund social recreation services with SCS, and the instant hearing ensued.

8. It appears there was a communication problem between mother and the agency. Mother did not realize that Barmann was providing social recreation training to claimant. According to mother, "had I known this, something could have been designed and we would not be here now."

9. Claimant is receiving social recreation services from Barmann in conformity with his IPP and the 2009 administrative order and it would be inappropriate to require the agency to use an improper vendor (SCS, which is vendored to provide speech pathology services) to provide services which require vendorization as a social recreation services provider.

LEGAL CONCLUSION

Based on the Factual Findings, considered in their entirety, the agency is in compliance with claimant's IPP goals and the 2009 administrative order and his appeal from the agency's refusal to fund SCS services is denied.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Claimant's appeal is denied. The programs currently being funded by the agency are in conformity with claimant's IPP and with the 2009 administrative decision.

DATED: May 18, 2012.

ROY W. HEWITT

Administrative Law Judge

Office of Administrative Hearings

Note: This is a final administrative decision pursuant to Welfare and Institutions Code section 4712.5(b)(2). Both parties are bound hereby. Either party may appeal this decision to a court of competent jurisdiction within 90 days.