

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

ZYON K.,

Claimant,

vs.

REDWOOD COAST REGIONAL CENTER,

Service Agency.

OAH No. 2012031093

DECISION

Administrative Law Judge Melissa G. Crowell, State of California, Office of Administrative Hearings, heard this matter telephonically on May 14, 2012, from the Office of Administrative Hearings, in Oakland, California. The parties appeared by telephone from the offices of Redwood Coast Regional Center in Crescent City, California.

Claimant was represented by her mother.

Director's Designee Karen Satern, Consumer Services Manager, represented Redwood Coast Regional Center.

The record was closed and the matter was submitted for decision on May 14, 2012.

ISSUE

Has Redwood Coast Regional Center erred by declining to fund the purchase of a Proloquo2Go application for the iPad?

FACTUAL FINDINGS

1. Claimant is a nine-year-old consumer of Redwood Coast Regional Center (RCRC) based on diagnoses of autism and mild intellectual disability (mild mental retardation). She lives at home with her mother and aunt. Claimant requires 24-hour supervision for her care and safety, and assistance with her personal care needs. She has limited communication skills. She expresses herself through various methods, including two-word phrases, gestures, and picture exchanges. She gets frustrated when she is not understood or her needs are not being met.

2. Claimant's mother purchased an iPad for her daughter in mid-January 2012. Claimant uses the iPad for music, movies, accessing You-Tube, and taking photographs. Claimant's mother has purchased art applications for the iPad, such as Doodle Pad, Glow Draw, and Rainbow Draw.

3. In a telephone call with her service coordinator, Deborah West, on February 2, 2012, claimant's mother requested that RCRC purchase a communication application for the iPad called Proloquo2Go. West explained the Individual Program Plan (IPP) planning process, and that the request would need to go to the planning team for consideration. West further explained that the planning team may require an assessment prior to consideration of the request. Claimant's mother expressed her opinion that claimant's behavioral consultant knew that claimant needed the application and that an assessment would not be necessary. She further expressed her opinion that the IPP process was "too time consuming", and that she would purchase the application herself.

4. West consulted with RCRC Behavior Analyst/Autism Clinical Specialist Kim Smalley on February 6, 2012. Smalley advised West that an assessment would not be necessary if the application was related to claimant's disability and if the application were related to a specified goal in the IPP unrelated to educational services. On that

same day, West called claimant's mother to schedule an IPP meeting for February 15, 2012.

5. Claimant's mother purchased the application on February 8, 2012.

6. The IPP meeting took place as scheduled on February 15¹. Claimant's mother provided West with a receipt in the amount of \$189.99, for the application she had purchased online through Apple iTunes on February 8, and she requested reimbursement for the purchase. Because she did not feel that claimant's mother had understood the IPP process, West provided her with a written explanation of the IPP process that she had written the day before. West agreed to take the request for reimbursement to her supervisors.

7. Claimant's use of the iPad was discussed at the IPP meeting, but no determination was made regarding whether the program would assist claimant in the IPP-identified need of learning "better ways to communicate her needs." The IPP reflects only that payment for the application was being denied because it had been purchased outside of the IPP process.

8. Consumer Services Manager Karen Saturn attended claimant's Individual Educational Program (IEP) planning meeting on February 22, 2012. At that meeting, claimant's use of the iPad was discussed. The IEP did not reflect that claimant had been using the iPad at school as a communication device. The speech therapist reported the following:

[Claimant] uses classroom communication tools, visual icons, gestures and imitates 1-word responses, inconsistently. She

¹ The IPP reflects a meeting date of February 17. This date is inconsistent with West's testimony and her notes.

benefits from visual cues, such as picture icons matched with voice recordings. She uses low-tech communication overlays, voice-recorded buttons, gestures and verbalizations. Eye-gaze is limited . . . She gives her attention to the communication partner and will respond, given faded physical prompts during a repeated activity. An interactive high technology device is used at home (iPad). During observation in the classroom, the iPad was available. [Claimant] displays active participation when making APP choices. She uses the screen interactively to change, rewind or preview programs. She has access to communication-based icons on the iPad. Shaping the use of a dynamic-screen technology as a communication tool may be beneficial to [claimant].

9. At an IPP review meeting on March 14, 2012, West advised claimant's mother that RCRC could not reimburse her for the cost of the application because it had been purchased without IPP authorization. She further advised claimant's mother that RCRC would issue a notice of proposed action. A Notice of Proposed Action, which declined funding of the application, was issued that day.

10. Claimant filed a timely request for fair hearing in which she requested reimbursement the cost of the application. Claimant's mother asserted that she "was told by my daughter's case worker" that "we would be reimbursed for the ProLoQuo2Go program for I-pad2 as a communication device"

11. Claimant's mother testified that she purchased the application on February 9 while on the telephone with West. She is confident of the date because her daughter

has surgery the next day. This date is inconsistent with her receipt for purchase, and is inconsistent with West's notes of her communications with claimant's mother.

Claimant's mother further testified that West told her to purchase the application and to seek reimbursement for it from RCRC. This testimony is inconsistent with West's testimony and with West's notes of her communications with claimant's mother. The testimony of claimant's mother on this point is found unpersuasive.

12. As explained by claimant's mother, the application works like a picture-exchange communication system. Claimant touches an icon on the iPad screen to articulate the word or concept she wants to communicate, and the application vocalizes the word or concept. The application contains thousands of different icons. In order to facilitate claimant's ability to use the program, claimant's mother has "dumbed down" the application to a few short phrases and words.

13. Claimant's mother concedes that there was no emergency associated with the purchase of the application. She does not believe that she should have to wait a month in order to get an item purchased for daughter. She does not know whether claimant is currently using the application at school.

LEGAL CONCLUSIONS

1. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act. (Welf. & Inst. Code, § 4500, et seq.) The Lanterman Act mandates that an "array of services and supports should be established . . . to meet the needs and choices of each person with developmental disabilities . . . and to support their integration into the mainstream life of the community." (Welf. & Inst. Code, § 4501.) Regional centers are charged with the responsibility of carrying out the state's responsibilities to the developmentally disabled under the Lanterman Act. (Welf. & Inst. Code, § 4620, subd. (a).) The Lanterman Act directs regional centers to develop and implement an Individual

Program Plan (IPP) for each individual who is eligible for regional center services. (Welf. & Inst. Code, § 4646.)

2. The IPP states the consumer's goals and objectives and delineates the services and supports needed by the consumer. (Welf. & Inst. Code, §§ 4646, 4646.5, & 4648.) The purchases of services and supports by regional centers are driven by the IPP, which must specify:

A schedule of the type and amount of services and supports to be purchased by the regional center or obtained from generic resources or other agencies in order to achieve the individual program plan goals and objectives, and identification of the provide or providers of service responsible for obtaining each objective The plan shall specify the approximate start date for services and supports and shall contain timelines for actions necessary to begin services and supports, including generic services.

(Welf. & Inst. Code, § 4646.5, subd. (c).) A regional center may only purchase services and supports that are consistent with stated goals and objectives in the IPP. (Welf. & Inst. Code, § 4646.5, subd. (c), & 4648.)

3. Any purchase with regional center funds must be preceded by a purchase of service authorization in advance of the provision of the service. (Cal. Code Regs., tit. 17, § 50612, subds. (a) & (b).) The only time a regional center may deviate from this rule is set forth in subdivision (b)(1) of section 50612, which provides:

A retroactive authorization shall be allowed for emergency services if the services are rendered by a vendored service provider:

- (A) At a time when authorized personnel of the regional center cannot be reached by the service provider either by telephone or in person (e.g., during the night or on weekends or holidays);
- (B) Where the service provider, consumer, or the consumer's parent . . . notifies the regional center within five days following the provision of service;
- (C) When the regional center determines that the service was necessary and appropriate.

4. Claimant's mother purchased the application without going through the IPP process, then sought reimbursement for the item. While it is understandable that claimant's mother was anxious to get claimant started in using the application, the Lanterman Act does not authorize reimbursing a parent for purchases in this manner. The only exception to the rule is under an emergency, and even then, it is with specific requirements which are not satisfied in this case. Claimant's request for reimbursement is therefore denied.

ORDER

The appeal of Zyion K. denied.

DATED: May 17, 2012

MELISSA G. CROWELL

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Judicial review of this decision may be sought in a court of competent jurisdiction within ninety (90) days.