

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the Fair Hearing Request
of:

OAH No. 2012060958

COLLIN H.

Claimant,

vs.

EASTERN LOS ANGELES REGIONAL CENTER,

Service Agency.

DECISION

This matter was heard by Eric Sawyer, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, on August 9, 2012, in Alhambra. The record was closed and the matter submitted for decision at the conclusion of the hearing.

Claimant, who was not present, was represented by his mother.¹ Jesse Valdez, Manager, represented the Eastern Los Angeles Regional Center (Service Agency).

ISSUE

Shall the Service Agency provide funding for Claimant to receive 27 hours per month of Personal Assistant services during breaks from school?

¹ Initials and family titles are used to protect the privacy of Claimant and his family.

EVIDENCE RELIED UPON

In making this Decision, the ALJ relied upon exhibits 1-10 submitted by the Service Agency, and the testimony of Claimant's mother.

FACTUAL FINDINGS

PARTIES AND JURISDICTION

1. Claimant is a 12-year-old male who is a consumer of the Service Agency based on his qualifying diagnosis of autism.
2. Claimant was formerly served by the Westside Regional Center (WRC). His case was transferred to the Service Agency in or about December of 2011 when he moved to the Service Agency's catchment area. Prior to transferring to the Service Agency, WRC provided funding for 27 hours per month of personal assistant (PA) services provided by Premiere. When Claimant's first Individual Program Plan (IPP) meeting with the Service Agency was conducted in December of 2011, Service Agency staff advised Claimant's mother that it would not provide similar funding for Claimant. A written notice of that denial was provided to Claimant's mother, which she did not appeal. Claimant's resulting IPP with the Service Agency therefore does not provide for PA funding.
3. As summer of 2012 was approaching, Claimant's mother again requested PA funding, to be used to provide Claimant with a 1:1 aide to accompany him while he attended the Boys and Girls Club in Santa Monica during the inter-session break between the end of summer school and the beginning of the regular school year, and for other school breaks during the winter and spring.
4. By a Notice of Proposed Action dated May 30, 2012, the Service Agency notified Claimant's mother that her funding request had been denied.

5. On June 13, 2012, Claimant's mother submitted a Fair Hearing Request to the Service Agency, which appealed the denial of her funding request.

BACKGROUND INFORMATION

6. Claimant and his mother live with his aunt and uncle in the Service Agency's catchment area. Because Claimant's mother works in West Los Angeles, she sometimes stays with a friend in that area. Claimant's parents have separated. Claimant's brother lives with his father. Claimant receives special education services from his local school district, however he has been placed in a non-public school (NPS), which is located in West Los Angeles. It is not apparent that Claimant requires an aide while at school.

7. Claimant's mother has been reluctant to provide information to Service Agency staff which she deems to be personal, such as details about Claimant's living arrangement and schooling, her work hours, and Claimant's funding for In-Home Supportive Services. As an example, Claimant's community integration vendor, In2Vision, recently contacted Claimant's Service Coordinator to advise that the vendor at times has been instructed to pick up or drop off Claimant at his former residence in West Los Angeles.

FACTS RELATED TO THE SERVICE REQUEST

8. It is not clear why WRC previously funded 27 hours per month of PA services for Claimant. The last IPP document issued by WRC does not provide details. Claimant's mother testified the service was funded so somebody could watch Claimant while she looked for a job or worked when she found one.

9. Claimant is a single mother. She works full-time in a department store. She wants Claimant to attend the Boys and Girls Club program in Santa Monica during inter-

session school breaks. That branch of the Boys and Girls Club provides programs for after school and during inter-session school breaks. Claimant's mother has chosen that program because it is close to her job and therefore easy to drop off Claimant and pick him up. She also picked that particular program because it is affordable and she has chosen to pay for it.

10. It is not clear why Claimant's mother is requesting 27 hours per month of PA services when she is requesting funding for limited periods, i.e., school breaks lasting a few weeks. However, she referred to WRC's prior funding of that amount in her testimony, as well as in the Fair Hearing Request. No evidence presented indicates that she requested a different amount, nor did she delineate the number of hours Claimant would spend at the Boys and Girls Club program in Santa Monica during school breaks.

11. Claimant's mother has requested the PA service because the Boys and Girls Club Program in Santa Monica has advised her that Claimant cannot attend without an aide. That is because Claimant at times can be unruly. Claimant receives adaptive skills training from Holding Hands, Inc., and behavior management assistance from the Vista Center for Behavior Analysis. Progress reports from those vendors document problem behaviors exhibited by Claimant when interacting with others.

12. The Service Agency has purchase of service (POS) guidelines for day care services. The day care guidelines recognize the principle set forth in pertinent statutes and regulations that regional centers should take into account parents' responsibility for providing services similar to those they would have to provide to a typical child. Generally, the day care guidelines require the Service Agency to only fund the cost of day care which exceeds the cost of providing day care to a typical child. The Service Agency's day care guidelines clearly provide that funding for a support aide is

appropriate when such is needed to allow a consumer to access a particular day care program.

13. Claimant's mother testified that the Santa Monica Boys and Girls Club in Santa Monica is the only nearby program that will accept Claimant with an aide and is the most cost-effective program for her. No evidence was presented indicating that the Service Agency has advised Claimant's mother of other similar programs at the same cost or less.

DISCUSSION

JURISDICTION AND BURDEN OF PROOF

The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, § 4500 et seq.) An administrative hearing to determine the rights and obligations of the parties, if any, is available under the Lanterman Act. (§§ 4700-4716.) Claimant timely requested a hearing to appeal the Service Agency's denial of his funding request. Jurisdiction in this case was thus established.

The standard of proof in this case is the preponderance of the evidence, because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.) When one seeks government benefits or services, the burden of proof is on him. (*See, e.g., Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 (disability benefits).) In this case, Claimant bears the burden of proof because he is requesting funding the Service Agency has not before agreed to provide. (Factual Findings 1-5.)

FUNDING FOR PERSONAL ASSISTANT SERVICES

Welfare and Institutions Code section 4512, subdivision (b),² generally defines services that can be funded under the Lanterman Act as those that are “specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability.”

Section 4685, subdivision (c)(6), mandates that regional centers “may pay only the cost of the day care service that exceeds the cost of providing day care services to a child without disabilities.”

Section 4646.4 was recently added to the Lanterman Act as a cost-containment measure in response to the current state budget crisis. Section 4646.4, subdivision (a), requires regional centers to conform to their POS guidelines, utilize available generic resources, and consider the family’s responsibility for providing similar services to a minor child without disabilities.

Another cost-containment measure recently added by the Legislature to the Lanterman Act is section 4648.5, subdivision (a)(2), which expressly suspends regional center funding for “[s]ocial recreation activities. . . .”

In this case, the Service Agency argues the requested funding is prohibited by section 4648.5, subdivision (a)(2), because the Boys and Girls Club program is essentially a social recreation activity. However, this statute is not applicable for two reasons. First, Claimant’s mother is not utilizing the program for social recreational opportunities, but rather as day care. Second, the Service Agency is not being asked to provide funding for the Boys and Girls Club program; Claimant’s mother is paying for it.

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

The service request here is for a support aide to help Claimant access the program. Such funding does not run afoul of section 4685, subdivision (c)(6), since the Service Agency is not being asked to fund day care. In fact, the service request is in line with this statute, as well as section 4646.4 and the Service Agency's day care guidelines, in that the funding is to provide a support aide to help Claimant access the program, which constitutes an additional expense parents of a typical child would not normally incur.

The Service Agency also argues that Claimant's mother's reluctance to provide information about her schedule and other funding for Claimant supports denial of the service request. However, it was not established that any particular information requested from her and not provided would make a difference in determining the outcome of this appeal. This is not a basis to deny the appeal.

It is worth noting that a consumer's IPP shall be reviewed and modified by the planning team as necessary, in response to the person's achievement or changing needs. (§ 4646.5, subd. (b).) In order to facilitate the IPP planning process, a regional center must be allowed to gather information and conduct assessments to determine the concerns or problems of the consumer. (§ 4646.5, subd. (a).) These underscore the larger point that the creation of an IPP is supposed to be a collaborative process. (§ 4646.) Therefore, the Service Agency is entitled to obtain information it reasonably needs to ascertain and confirm Claimant's needs, in conjunction with his family.

Claimant's mother established a need for the requested service, and the Service Agency has not established cause to deny the service request. Nonetheless, due to the timing of the Fair Hearing Request submission and the hearing of this matter, the summer inter-session period has already passed. The service request for that period is

therefore moot. However, the service request should be granted for the two-week winter break period and the one week spring break period in 2013.

It is apparent that Claimant's living situation, his mother's work schedule, his school hours and the availability of family and friends to care for him while his mother works are all fluid and subject to change. There is a real possibility that these factors will change by next year's summer inter-session period. For that reason, the funding ordered in this matter will not extend to that period. Claimant's mother should begin that process earlier next year to avoid the timing problems encountered herein, in case the parties are unable to reach agreement and an appeal is necessary.

LEGAL CONCLUSION

Cause was established pursuant to sections 4512, subdivision (b), 4646.4, 4648.5, and 4685, subdivision (c)(6), to order the Service Agency to provide Personal Assistant funding to be used for a support aide to assist Claimant attend the Boys and Girls Club program in Santa Monica during the upcoming winter and spring school breaks. The funding shall not exceed 27 hours for each break period. (Factual Findings 1-13 and Discussion.)

ORDER

Claimant's appeal is granted. The Service Agency shall provide Personal Assistant funding to be used for a support aide to assist Claimant attend the Boys and Girls Club program in Santa Monica during the upcoming winter and spring school breaks. The funding shall not exceed 27 hours for each break period.

DATE: August 22, 2012



ERIC SAWYER

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.