

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

OAH No. 2013011014

AMY E.,

Claimant,

vs.

WESTSIDE REGIONAL CENTER,

Service Agency.

DECISION

This matter was heard by Eric Sawyer, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, on May 21, 2013, in Culver City. The record was closed and the matter was submitted for decision at the conclusion of the hearing.

Claimant, who was not present, was represented by her parents.¹

Lisa Basiri, Fair Hearing Coordinator, represented Westside Regional Center (Service Agency).

ISSUE

Shall the Service Agency reimburse Claimant's parents for the cost of the Ezra program at Camp Ramah that Claimant will attend in the summer of 2013?

¹ Claimant and her parents are identified by first name and last initial, or by title, to protect their privacy.

FACTUAL FINDINGS

PARTIES AND JURISDICTION

1. Claimant is a 23-year-old conserved female. Her parents are co-conservators. She became a consumer of the Service Agency in 2005. She has diagnoses of mild mental retardation, autism, and hydrocephalus. She is also diagnosed with bipolar disorder and, in the past, has been diagnosed with attention deficit hyperactivity disorder. Claimant lives with her parents.

2. In a letter dated December 10, 2012, the Service Agency notified Claimant's parents that it denied their request for funding for Claimant to attend the Ezra program at Camp Ramah for the summer of 2013. The Service Agency denied the request based on Welfare and Institutions Code section 4648.5, which suspends the authority of regional centers to purchase camping services. On January 7, 2013, Claimant's father filed a fair hearing request on his daughter's behalf to appeal the Service Agency's denial of funding.

3. Claimant's parents, having requested a fair hearing, paid the cost of the Ezra program and seek reimbursement of \$8,480 they paid for the camp fee. The Service Agency denied the request for reimbursement based on section 4648.5.

4. The hearing of this matter was initially scheduled for March 21, 2013. However, the hearing date was continued at the request of Claimant's father. In connection with that continuance request, Claimant's father executed a written waiver of the time limit prescribed by law for holding the hearing and for the ALJ to issue a decision.

EZRA PROGRAM AT CAMP RAMAH

5. Camp Ramah, near Ojai, California, is a camp for typical children that also has two programs for children and persons with learning, emotional, or developmental

and other disabilities. The Tikvah program is a four-week program designed for children ages 11 to 18. The Ezra program is an eight-week program for persons ages 18 to 22. Claimant attended the Tikvah program for three years and has attended the Ezra program since 2008. The Tikvah and Ezra programs operate within Camp Ramah, so that the Tikvah and Ezra campers interact with other typical, non-disabled campers.

6. Claimant was supposed to have graduated from the program last year when she was 22. However, Claimant's parents report that the camp owner has decided to allow Claimant's class enroll in one further year before requiring them to graduate. The circumstances behind this decision were not established. However, Claimant's parents agreed during the hearing of this matter that this will be the last year their daughter will attend Camp Ramah and that they will not request funding for the same in the future. The ALJ has relied on that representation, in part, in rendering this Decision.

7. Participants of the Ezra program live at the camp, alongside some 1,400 other campers and staff. The Ezra campers spend their days with job site experience, life skill classes, and recreational activities. They live in communal and independent living quarters with adult supervision. The Ezra program is designed to increase personal responsibility by the participants, both in terms of discharging tasks and in regard to their social interactions. The Ezra campers are taught independent living skills and are given a job at the camp. The Ezra program also provides opportunities to interface with typical, non-disabled campers. According to Claimant's mother, the Ezra program has created lasting friendship for Claimant as well.

CLAIMANT'S NEEDS AND IPP

8. Claimant's most recent individual program plan (IPP) was created in November 2012.

9. Claimant relies on routine and does well with a structured schedule.

10. Claimant's needs in the area of independent living skills are that she continues to lack judgment and understanding of potential consequences for her actions; she exhibits impulsivity and poor boundaries; and she is still learning how to effectively advocate for herself and make informed decisions that are in her best interest in terms of education, living arrangement, and medical care.

11. Camp Ramah has played a crucial role in her development. The camp has provided opportunities in the areas of independent living, vocational training, and social skills. Claimant has gained confidence, learned about the skills necessary to live independently, and worked for pay in areas of interest for her.

12. The 2012 IPP has two goals in the area of social-emotional/recreational. The first goal is that Claimant will continue to develop interpersonal skills and maintain friendships. The second goal is that Claimant's family "will assist in creating opportunities for Amy to participate in social and recreational activities."

13. Claimant's parents presented a letter dated May 7, 2013, by Susan R. Young, M.D., a board certified child, adolescent, and adult psychiatrist. Claimant has been Dr. Young's patient since 1995. Dr. Young's opinion is that the Ezra program at Camp Ramah is an essential part of Claimant's therapeutic program, "in preventing interruption of her stability with subsequent psychiatric hospitalization." Dr. Young finds that the Ezra program provides consistency and structure Claimant needs for her mental stability.

14. This issue has been litigated by the parties in Fair Hearings pertaining to reimbursement requests for Claimant to attend Camp Ramah in the summers of 2010, 2011 and 2012. ALJs Erlinda Shrenger and Jankhana Desai specifically found that although Camp Ramah was a camping service subject to funding suspension pursuant to section 4648.5, subdivision (a), Claimant established the Ezra Program was a critical means for ameliorating the physical, cognitive or psychosocial effects of her

developmental disability and that she therefore proved an exemption to the funding suspension. As a result, the Service Agency was ordered to provide reimbursement for the summers of 2010 and 2012. Claimant's parents were not awarded reimbursement for the summer of 2011 because the ALJ found they did not timely make their reimbursement request to the Service Agency.

LEGAL CONCLUSIONS

1. This case is governed by the Lanterman Developmental Disabilities Services Act (Lanterman Act). (Welf. & Inst. Code, § 4500, et seq.)²

2. The Legislature made significant changes to the provision of services under the Lanterman Act through the Budget Act of 2009. Section 4648.5, added to the Lanterman Act, states as follows:

(a) Notwithstanding any other provision of law or regulations to the contrary, effective July 1, 2009, a regional center's 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.

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

- (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.

3. In this case, the Ezra program at Camp Ramah is a camping service that is subject to suspension under section 4648.5, subdivision (a)(1). The Service Agency's authority to purchase such service is suspended pending the implementation of the Individual Choice Budget, which has not yet occurred. Claimant, however, is entitled to an exemption under section 4648.5, subdivision (c). The Ezra program at Camp Ramah is a critical means for ameliorating the physical, cognitive, or psychosocial effects of Claimant's developmental disability. The Ezra program provides opportunities for Claimant to develop her independent living, socialization, and vocational skills, in a setting that provides structure and supervision that enables her to maintain her mental and behavioral stability. However, as Claimant is expected to graduate this summer from the program, and her parents have stipulated that she will not attend camp next year, no further funding for this service should be provided after this year. (Factual Findings 5-14.)

4. Cause exists for the Service Agency to reimburse Claimant's parents for the cost they paid for Claimant to attend the Ezra program at Camp Ramah in summer 2013. Although the authority of regional centers to purchase camping services is suspended under section 4648.5, Claimant qualifies for an exemption under subdivision (c) of that statute.

ORDER

Claimant's appeal is granted. Westside Regional Center shall reimburse Claimant's parents for the cost they paid for the Ezra program for summer 2013, up to the amount of \$8,480, upon Claimant's parents providing documentation of payment.

DATED: June 5, 2013



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.