

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

NATHAN Y.

Claimant,

v.

REDWOOD COAST REGIONAL
CENTER,

Service Agency.

OAH No. 2013040457

DECISION

Administrative Law Judge Kirk E. Miller, State of California, Office of Administrative Hearings, heard this matter on April 24, 2013, in Eureka, California.

Lynne Page, Attorney at Law, represented Claimant, who was not present.

Nancy Ryan, Attorney at Law, represented the Redwood Coast Regional Center (RCRC).

The matter was submitted for decision on April 24, 2013.

ISSUE

Is RCRC required to arrange for and provide a behavioral assessment to Claimant, to determine if he would benefit from additional behavioral services at this time?

FACTUAL FINDINGS

1. Claimant is a 32-year-old man who is eligible for regional center services based on his diagnosis of autism spectrum disorder, and he has been a RCRC consumer

since 2006. Claimant is described as "high functioning," which means he has only a limited intellectual disability. He has created a home business making and selling soy based scented candles, and would like to employ others with disabilities. With the help of supported living services, Claimant lives in his parent's garage apartment with his girlfriend. He is articulate, but has little social contact, feels isolated, and would like to go out more, but is uncomfortable with groups of people he does not know. Claimant prefers using email to other forms of communication, he is gaining weight, and he would like to prepare more meals at home rather than eating out, but is challenged by grocery shopping. The atmosphere in the grocery store makes him agitated. Claimant is also challenged by perseveration of thinking, which prevents him from following a routine; once he starts a project, such as working on the computer, he is not readily able to stop to do other tasks. Finally, Claimant is also challenged by sensitization, which results in personal hygiene issues, such as a reluctance to regularly brush his teeth or care for his feet.

2. RCRC consumers must have an individual program plan (IPP), which sets forth their goals and plans to attain them. Following six months of discussions, the RCRC team, together with Claimant, finalized an IPP on March 12, 2012.¹ Among the goals and needs identified in the IPP, were improved dental hygiene; improved social skills to enhance his candle business and his desire to become an advocate for autism issues; improved diet; and dealing with his tendency to perseverate on business or computer tasks.

3. Beginning in May 2010, prior to the creation of the 2011 IPP and continuing through August 2012, RCRC authorized Claimant to work with Multiplicity Therapeutic Services (MTS), an organization that provides behavior services. Claimant and MTS met

¹ An IPP must be periodically reviewed and updated, but if new needs or goals are not identified, it can remain in place for up to three years. (Welf. & Inst. Code, § 4646.5, subd. (b))

regularly between 2010 and 2012, and based on these meetings and its experience, MTS suggested various behavioral based strategies to assist Claimant to change the behaviors that interfere with the attainment of his goals. In August 2012, MTS recommend that its services be terminated because the goals he had identified had been attained or could be better practiced with those who worked with Claimant on a daily basis. MTS also instructed Claimant's day-to-day caregivers in how to support those goals.

4. In addition to the behavioral consultation provided by MTS, RCRC contracts with an entity called HCAR to provide Claimant with 148 hours per month of supported living services. HCAR personnel help Claimant with routine tasks of daily living, such as shopping, meal planning and arranging medical care, and it is also responsible for working with Claimant to implement the strategies MTS developed.

5. Using the 2012 IPP as a template, RCRC met with Claimant in February 2013, to update the document. The parties could not reach an agreement regarding the continued need for behavioral services, and for that reason, the document is still in draft form. The proposed 2013 IPP provides for new and additional services, including twice-monthly counseling with a psychologist; participation in a day program to reduce isolation and improve his social interactions; support from Community Integration Services to help him take college classes; and 24-hour crisis intervention services. Because the draft IPP does not provide for the continued behavioral services, Claimant requested a behavioral assessment to determine if they are appropriate. RCRC denied the request and this hearing followed.

6. Pegeen Cronin, Ph.D., and an expert on autism, testified on Claimant's behalf. Cronin did not met Claimant, but she reviewed his records, and believes he would benefit from a behavioral assessment and from continuing behavior services. Cronin stated that a behavior assessment would look at targeted behaviors that interfere with development and identify strategies to motivate change. The change might be driven by a rewards or some

other system, and requires regular practice and reinforcement to avoid regression. For example, Cronin suggested Claimant might “earn” computer time, if he accomplished other tasks. Because of the need to practice the skills in an appropriate environment, counseling is not a substitute for a behaviorist’s services.

7. Kimberly Smalley, Ph.D., an autism specialist, is employed by and testified for RCRC. Smalley has known Complainant since he became an RCRC consumer in 2006. It is her view that a rewards system to reinforce desired behaviors is useful for children, but would not work with Claimant. She testified persuasively that Claimant is seeking a behavior assessment because he prefers to interact with degreed professionals as compared with those who provide his supported living services. The behavioral assessment Claimant seeks is for issues that have previously been identified and addressed, such as preparing meals, caring for his teeth and feet, and socialization skills. MTS developed strategies to address these issues and taught the supported living staff how to address them with Claimant, but Claimant would prefer to engage with a master’s level person on the same issues. These needs were identified in the 2012 IPP and the draft 2013 IPP.

LEGAL CONCLUSIONS

1. Pursuant to Welfare and Institutions Code² section 4646, subdivision (a), RCRC is required to develop an IPP for Claimant. Section 4626, subdivision (b), requires the IPP to be “developed through a process of individualized needs determination” and requires the person with developmental disabilities to receive the “opportunity to actively participate in the development of the plan.” Both the 2012 IPP and the draft 2013 IPP were prepared only after extensive consultation with and consideration of Claimant’s needs, and comply with these requirements.

² All references are to the Welfare and Institutions Code unless otherwise indicated.

2. Section 4686.2, subdivision (a), describes a vendor's requirements when it provides applied behavioral analysis services. These include: (1) conducting a behavioral assessment; (2) designing an intervention plan; and (3) providing a copy of the intervention plan to the regional center for review and consideration by the planning team members. MTS complied with each of these requirements.

3. Section 4686.2, subdivision (b)(2), requires a regional center to discontinue the purchasing of behavioral intervention services for a consumer when the consumer's treatment goals and objectives, after having been reviewed and updated, are determined to have been achieved. RCRC first purchased behavioral analysis services for Claimant in May 2010, and they were provided through August 2012. Claimant now seeks another assessment to determine if there is a need to continue these services. MTS has already developed strategies to address the issues identified in the 2012 IPP and the 2013 draft IPP, and it has instructed HCAR's caregivers about how to practice these strategies with Claimant. At this point it is up to Claimant to take advantage of the work MTS has done, as well as the other services RCRC has offered, to reap the benefits of what has been provided. The need for a further assessment was not demonstrated by the evidence.

ORDER

Claimant's appeal is denied.

DATED: May 2, 2013

_____/s/_____

KIRK E. MILLER

Administrative Law Judge

Office of Administrative Hearings

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.