

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT

and

FRANK D. LANTERMAN REGIONAL  
CENTER,

Service Agency.

OAH No. 2013100704

DECISION

Jennifer M. Russell, Administrative Law Judge, Office of Administrative Hearings, heard this matter in Los Angeles, California on February 4 and 25, 2014.

Marc Baca, Appeals Coordinator, represented the Frank D. Lanterman Regional Center (FDLRC or service agency). Parents represented Claimant.

Testimonial and documentary evidence was received, the case was argued, and the matter was submitted for decision on February 25, 2015. The Administrative Law Judge makes the following Factual Findings, Legal Conclusions, and Order.

ISSUES

1. Whether the service agency should reimburse Parents' out-of-pocket expenditures incurred for a social skills training program provided to Claimant through Scheflen Speech-Language Pathology, Inc.

2. Whether Claimant's present needs require the service agency to fund a social skills program through Scheflen Speech-Language Pathology, Inc. on a going forward basis to meet those needs.

## FACTUAL FINDINGS

1. Claimant is a 5-year-old consumer of FDLRC due to his qualifying diagnosis of autism. Claimant resides with Parents.
2. On May 14, 2013, Parents requested FDLRC to reimburse their out-of-pocket expenditures for a Scheflen social skills training program they purchased for Claimant without the service agency's prior approval. Parents additionally requested FDLRC to fund the Scheflen social skills program on a going forward basis. On September 24, 2013, FDLRC denied both requests. On October 15, 2013, Parents filed a timely fair hearing request. Thereafter, these proceedings ensued.
3. Claimant's June 22, 2011 Individual Program Plan (IPP) and July 9, 2013 Annual Review establish that Claimant presents with severe maladaptive behaviors and a limited vocabulary of two— and three—word phrases.
4. Currently, FDLRC funds 30 hours per week of direct ABA services through Autism Partnership (AP) for Claimant. AP's most recent report, dated July 2013, indicates that Claimant "exhibits a range of disruptive behaviors that interfere with his ability to access his social and learning environments or participate in most day-to-day activities in a meaningful way." (Ex. 8 at p. 1.) Several enumerated "areas of need" include frustration tolerance, stress management, sustained attention, stereotypy, age appropriate play and leisure skills, emotional regulation, learning to learn community safety and environmental awareness, and functional communication. The AP report indicates that Claimant is "extremely responsive to behavioral intervention," but that Claimant "continues to present with an extremely high rate of challenging behaviors and skill deficits." According to the report, "the pervasiveness of behaviors that impede [Claimant's] . . . awareness of and ability to learn from his environment, his need for intensive treatment focusing on the reduction of disruptive behavior and the development of foundational skills cannot be understated." (Ex. 8 at p. 10.)

5. Jean Johnson, Ph.D., a consulting clinical specialist who did not conduct an assessment of Claimant, but who reviewed Claimant's records, testified that Claimant's ABA services through AP are designed to reduce interfering behaviors. According to Dr. Johnson, Claimant's behavior intervention program "begins with basic skills that are simple, but serve as sub-traits for other skills. More complex skills, such as social skills, are built on these basic sub-traits." Claimant "must be able to play in order to be able to take turns, and so on."

6. Claimant received treatment from UCLA's Early Childhood Partial Hospitalization Program (ECPHP) from October 19, 2012 through April 19, 2013. At the ECPHP, clinical observations and a battery of assessments indicated that Claimant "presented [with] maladaptive behaviors that impacted his ability to engage in basic social interactions with adults[.]" (Ex. 9 at p. 21.) In both structured and unstructured peer group recreational activities, Claimant "was limited in his peer awareness as evidenced by no spontaneous imitations or on-looking. . . . [Claimant] showed no interest or awareness of any of his peers or activities in which they engaged. During unstructured play time in the classroom, he engaged in solitary and rigid play. He made no attempts to approach peers and showed no signs of awareness when peers approached him." (Ex. 9 at p. 22.) The ECPHP introduced Claimant to an adult interactional social skills group in which he practiced certain targeted social goals during structured activities.<sup>1</sup> Claimant also participated in a peer social skills curriculum targeting social deficits and offering opportunities to practice social goals such as

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<sup>1</sup> Those activities include attending to adult's face, smiling responsively, orienting to adults, regarding self, identifying self in mirror, reaching for desired stimuli, giving a request help, following a point to request and pointing/picking to request. (Ex. 9 at p. 22.)

playing near peers and parallel play. Based on Claimant's participation in these social skills group and curriculum, the ECPHP has, in a July 213 Multidisciplinary Discharge Summary Report, identified 20 social development goals for effective continuity of service for Claimant. These social development goals range from teaching Claimant how to initiate greetings with familiar adults to receptively identifying when it is a peer's turn. (Ex. 9 at pp. 37-38.)

7. In May 2013, Parents enrolled Claimant at Scheflen, a provider not vendored with the service agency, for social skills training because AP determined that Claimant currently lacks the behavioral capacity to participate in its skills training program. Jennifer Styzens, a behavior analyst at AP, has so stated in a letter to Parents:

Currently, [Claimant's] . . . behavioral needs significantly impair his ability to learn. He has severe language and play needs as well as social needs. Unfortunately, the number of hours provided to [Claimant] . . . although significant, are not enough to meet all of [Claimant's] current behavioral and skill needs. [Claimant] . . . does participate with other students at Autism Partnership clinic. However, these services emphasize the teaching of learning to learn skills which are prerequisites to our social skills group (i.e., reduction of self[-]stimulation, increased compliance and attention to instructions, and following instructions that multiple steps out of chair). Currently, [Claimant] . . . does not have the behavioral capabilities to participate in our seahorse or polliwogs groups which are designed to develop social skills. (Ex. G.)

8. Claimant's social skills training at Scheflen occurs in a small group that convenes for two hours each week. Scheflen's treatment plan for Claimant addresses 13 goals in the area of "Social Skills/Pragmatic Language/Behavior Goals."<sup>2</sup> (Ex. 10.) According to Parents, Scheflen's social skills training program has benefitted Claimant. A February 1, 2014 Progress Report from Scheflen indicates that Claimant "has made steady progress to date, but for optimum progression continues to require a small group of one or two peers moderated by two clinicians to facilitate his social interactions. (Ex. I.)

9. Dana Sunderland, Claimant's service coordinator, and Sonia Garibay, a regional manager at FDLRC, both testified that social skills training is a component of the ABA services that AP provides to Claimant, and that those services meet Claimant's current socialization needs. Both maintain that Scheflen's social skills training program is a duplication of a service already in place for Claimant and which addresses Claimant's socialization needs. In addition, FDLRC made no decision to fund a social skills training program through Scheflen for Claimant prior to Parents incurring costs associated with the program. Their testimonies establish that FDLRC's purchase of service policy guidelines and practices prohibit FDLRC from funding Claimant's Scheflen program to the extent that it duplicates an existing FDLRC-funded service provided to Claimant.

10. Neither party offered evidence of the costs Parents incurred in connection with Scheflen's social skills training program for Claimant.

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<sup>2</sup> These include goals in large part mirror ECPHP's targeted social goals. They include a range of goals from teaching Claimant to "independently imitate his peers" to "engage in adult-directed collaborative play activity" to "receptively identify when it is a peer's turn by pointing." (Ex. 10.)

11. Both Ms. Sunderland and Ms. Garibay additionally testified that Claimant has a June 6, 2011 Individualized Educational Plan (IEP) with social skills components to meet Claimant's socialization needs. The IEP identifies the following "Peer Interaction Goal" and "Play Goal."

PEER INTERACTION GOAL:

By 5/16/2013, [Claimant] . . . will independently engage in simple cooperative play (i.e. take turns putting blocks into a tower, or help to fill a bucket with sand) with a peer in 3 out of 4 opportunities, as measured by teacher observation and data collection. . . .

PLAY GOAL:

By 5/16/2013, [Claimant] . . . will independently demonstrate appropriate play with at least 5 different toys (ie., move train across tracks, assemble Duplo's) for at least 3-step play sequences in 3 out of 4 opportunities, as measured by teacher observation and data collection. (Ex. 4 at p. 3.)<sup>3</sup>

12. Claimant is not currently enrolled in an elementary school. Therefore Claimant is currently not receiving any of the services provided for in his IEP at this time.

13. It is undisputed that Claimant has socialization deficits. There is little consensus, however, on how best to redress these deficits. Whereas AP's initial focus is

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<sup>3</sup> Parents have moved out of the school district for which this IEP was written. It was noted at the hearing, however, that the IEP travels with Claimant and would govern the educational services he is to receive in his current school district.

on the sub-strait components comprising more complex social goals, Scheflen's focus appears more direct. Nothing in the documentary and testimonial evidence offered at the hearing suggests that one approach is right and the other is wrong. At most, as Dr. Johnson's testimony suggests, the clinicians assessing and treating Claimant have provided Parents with inconsistent advice. Ultimately, Parents have the right to decide how best to address Claimant's needs. Parents' exercise of their rights, however, must be consistent with the requirements of the regulatory scheme in which the service agency operates.

## LEGAL CONCLUSIONS

1. Under the Lanterman Developmental Disabilities Services Act (Lanterman Act),<sup>4</sup> developmentally disabled persons in California have a statutory right to treatment and habilitation services and supports at state expense. (§§ 4502, 4620, 4646-4648; *Association for Retarded Citizens—California v. Department of Developmental Services* (1985) 38 Cal.3d 384, 389.)

2. 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 of life in the community." (§ 4501.) Regional centers play a critical role in the coordination and delivery of services and supports for persons with disabilities. (§ 4620 et seq.) Regional centers are responsible for developing and implementing individual program plans (IPP) for consumers, for taking into account individual consumer needs and preferences, and for ensuring service cost effectiveness. (§§ 4646, 4646.5, 4647, and 4648.)

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<sup>4</sup> Welfare and Institutions Code section 4500 et seq.

3. The services and supports to be funded for a consumer are determined through the IPP process, which involves collaboration with the consumer or consumer's parents and service agency representatives. IPPs are subject to review in response to a consumer's achievement or changing needs (§ 4646, subd. (b).)

4. When purchasing services and supports a regional center must conform to its purchase of service policy guidelines and practices. (Welf. & Inst. Code, § 4646.4, subd. (a)(1).)

5. Except in certain limited circumstances, prior written authorization is required for all services purchased using funds from a service agency. (Cal. Code Regs., tit. 17, § 50612.)

6. Claimant has the burden of proving by a preponderance of evidence that the service agency should (a) reimburse out-of-pocket costs for social skills training Scheflen provided to him and (b) fund his social skills training program through Scheflen on a going forward basis. (Evid. Code, §§ 115 ("Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence.") and 500 ("a party has the burden of proof as to each fact the existence of which is essential to the claim for relief or defense that he is asserting.").)

7. Cause does not exist for FDLRC to reimburse Parents' out-of-pocket expenditures incurred in connection with the social skills training that Scheflen provided to Claimant by reason of Factual Finding 9 and Legal Conclusions 3 through 5, inclusive. Contrary to the IPP process, Parents did not obtain FDLRC's prior funding authorization for Scheflen before enrolling Claimant in its social skills training program and incurring costs.

8. Cause exists for FDLRC to fund Claimant's social skills training program through Scheflen on a going forward basis by reason of Factual Findings 3 through 8, inclusive, and Legal Conclusions 1 through 3, inclusive. Claimant has severe socialization

deficits. His maladaptive behaviors, however, present challenges to addressing those deficits. Claimant's hours at AP are insufficient to address the entirety of his skills and behavioral needs. As a consequence, AP's current focus has been limited to Claimant's underlying behavioral capabilities. At Scheflen, with guidance from its clinicians, Claimant has made progress interacting socially with a small group of his peers. Nothing indicates that Claimant is unlikely continue to achieve progress in his social skills training program at Scheflen.

9. All factual and legal arguments asserted during the February 4 and 25, 2014 hearing not addressed herein are unsupported by the evidence, irrelevant, without merit, or constitute surplusage.

## ORDER

1. Claimant's appeal is denied in part and granted in part.
2. Frank D. Lanterman Regional Center may decline to reimburse Parents' out-of-pocket expenditures incurred in connection with the social skills training that Scheflen provided to Claimant without prior written funding authorization.
3. Frank D. Lanterman Regional Center shall fund social skills training for Claimant at a rate of two hours per week through Scheflen on the following terms and conditions:
  - (a) The costs of Scheflen's social skills training program shall not exceed the equivalent costs of a similar program through a vendored service agency provider.
  - (b) Scheflen shall submit to Frank D. Lanterman Regional Center quarterly progress reports for Claimant in a format designated by the service agency.
4. Six (6) months from the date of this Decision Frank D. Lanterman Regional Center shall convene an individual program plan pursuant to section 4646, subdivision (d) of the Lanterman Act.

Dated: March 11, 2014

A handwritten signature in black ink, appearing to read 'J. Russell', with a long horizontal line extending from the end of the signature.

JENNIFER M. RUSSELL

Administrative Law Judge

Office of Administrative Hearings

This is the final administrative decision. This decision binds both parties. Either party may appeal this decision to a court of competent jurisdiction within 90 days.