

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

KEVIN H.,

Claimant,

vs.

EASTERN LOS ANGELES REGIONAL  
CENTER,

Service Agency.

OAH No. 2013100929

DECISION

Administrative Law Judge Deborah M. Gmeiner of the Office of Administrative Hearings heard this matter on November 22, 2013, in Pomona, California.

Kevin H. (Claimant) was represented by his mother and father.<sup>1</sup> Claimant did not attend the hearing.

Lee Stollo, Supervisor, represented Eastern Los Angeles Regional Center (ELARC or Service Agency).

Claimant's appeal was consolidated for hearing with the appeals of his siblings Jennifer (OAH case number 2013100925 and 2013100928), and David (OAH case number

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<sup>1</sup> Claimant and his siblings are identified by first name and last initial to protect their privacy.

20131920 and 2013100924). Evidence was received and the matter was submitted for decision at the conclusion of the hearing on November 22, 2013.

## ISSUE

Should Service Agency fund two additional hours of Social Emotional Development Intervention (SEDI) socialization training to be provided by Pasadena Child Development Associates (PCDA)?<sup>2</sup>

## FACTUAL FINDINGS

1. Claimant is a 6-year-old boy who resides with his parents and his three siblings. Neither parent works and all four children attend school. Claimant is eligible for service under the Lanterman Developmental Disabilities Services Act (Lanterman Act) (Welf. & Inst. Code, § 4500 et seq.) on the basis of autism.<sup>3</sup> Claimant's siblings, Jennifer and David, 10-year-old twins, are also eligible for Lanterman Act services on the basis of autism. Claimant has a twin sister, Linda, who is not eligible for Lanterman Act services.

2. On September 18, 2013, the Service Agency gave Claimant notice of its proposed action (NPA) denying Claimant's request for Service Agency to fund additional

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<sup>2</sup> Claimant's request for fair hearing identified two additional issues: whether Service Agency should fund for transportation to and from PCDA; and whether Service Agency should fund for occupational therapy and physical therapy services? The parties resolved these issues before the hearing in this matter by Notice of Resolution dated October 28, 2013.

<sup>3</sup> All further statutory references are to the Welfare and Institutions Code, unless otherwise specified.

PCDA socialization training. In denying Claimant's request, Service Agency's NPA stated:

[Claimant] . . . currently receives socialization training group 1.5<sup>4</sup> hours per week with Pasadena Child Development Associates. The need of 1.5 hours per week was assessed by PCDA; additional hours are not warranted. [Claimant] also receives special education services and social/emotional skills training through the school district which is a generic resource. Program plan (IPP))

3. In support of its decision, Service Agency cited section 4648 subdivision (a) (1) (securing services and supports to achieve the objectives of consumer's individual)); section 4659, subdivision (a) (1) (regional center's obligation to identify and pursue all sources of funding for consumers receiving regional center services including but not limited to governmental programs); section 4686.5, subdivision (a) (1) (purchase of respite services); and section 4512, subdivision (b) (defining services and supports for persons with developmental disabilities).

4. Claimant timely filed a Fair Hearing Request on September 24, 2013. That request asked for additional socialization training from PCDA. Claimant's request for transportation and physical and occupational therapy were resolved prior to hearing.

5. On October 28, 2013, Lee Strollo (Strollo), a Service Agency supervisor, met with parents for purposes of an informal fair hearing to consider Claimant and her siblings'

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<sup>4</sup> Although the NPA states that Claimant is receiving 1.5 hours per week of PCDA services, PCDA 's November 2013 progress summary states that he receives 2 hours per week.

appeals. By letter dated October 29, 2013, Strollo upheld the original determination denying Claimant's request for additional PCDA socialization training group. This hearing ensued.

## BACKGROUND

6. According to Claimant's December 2012 Individual Program Plan (IPP), Claimant is in stable health, though he does have numerous health conditions. These include short-bowel syndrome, hepatosplenomegaly (enlargement of the liver and spleen), left hydronephrosis (swelling of the kidneys due to urine back-up), cholestatic liver disease (bile does not flow to the liver), meconium peritonitis (rupture of the bowel prior to birth), asthma, and suspected cystic fibrosis. Claimant has food allergies. Claimant takes several medications, including medications for asthma, allergies and heart burn. Claimant sees his gastroenterologist every two to three months and his primary physician one to two times per month.

7. Claimant requires assistance with all self-help needs, including toileting, dressing, bathing, and personal hygiene. Claimant continues to wear diapers.

8. Claimant is able to feed himself with his fingers with parental supervision. Because of his food allergies, parents prepare his food. At the time of his 2012 IPP, Claimant was still on formula due to his allergies and digestion problems.

9. Claimant is enrolled in a special day class at school. He receives occupational and speech therapy through his school program.

10. Claimant must be closely supervised at all times. He is not aware of danger and, on a daily basis, will try to run out of the house and will cry and scream when his parents try to block him. Occasionally he will pull his mother's hair when he is upset. He will cry and scream when things do not go his way. Claimant has no friends, has difficulty interacting with others, engages in stereotypic behavior, and can be difficult to understand when he speaks. Claimant has difficulty following directions and focusing on tasks.

11. Claimant's 2012 IPP includes an objective directed at improving Claimant's self-help skills and behavior deficits. To address these concerns, Service Agency has authorized 12 hours per week of Discrete Trial Training (DTT) to be provided by SEEK, a vendored service provider. These services are provided in the home. Parents placed this service on hold but are reportedly interested in restarting the SEEK services. Parents told PCDA staff they were dissatisfied with SEEK because they felt Claimant was not progressing due to the long hours involved.

12. Claimant's 2012 IPP also identifies deficits in Claimant's socialization and behavior problems. The IPP identifies the Social Emotional Development Intervention (SEDI) program provided by PCDA along with consistent parental support in order to address these problems. Father's initial unwillingness to have a male DI assigned to work with Claimant, and PCDA's services are provided in the home. Service Agency originally agreed to fund one hour per week of PCDA services. Funding was increased to two hours per week effective July 2013. On November 15, 2013, PCDA wrote Claimant's service coordinator addressing Claimant's attendance problems and efforts PCDA was making to address those problems. Attendance problems resulted from parents unwillingness to have the Developmental Interventionist (DI) meet with Claimant at a time when is typically napping, , parents availability only one two hour time block per week , fathers initial concern about using a male DI and PCDA's problem in locating a DI able to work parents preferred time. According to PCDA's November 2013 progress and doesn't talk to his parents. Parent's worry that Claimant does not know how to care for himself, had difficulty interacting with other children, summary, during PCDA's six month reporting period, Claimant received services for approximately six weeks during the summer school break. When school resumed, Claimant was placed on a waiting list due to parent's request for a schedule change. In its November 2013 progress summary, PCDA recommended that Claimant continue to receive two hours per week of SEDI services for a six month period.

Parents believe that if Services Agency authorized four hours of services per week, then PCDA will be more likely to locate a DI willing to work such hours.

#### CLAIMANT'S CONTENTIONS

13. Claimant's parents describe the stress they experience caring for Claimant and his siblings. Claimant is very active. Father is often up at night caring for Claimant and his siblings. He in turn rests, works on the family vehicle and help mother with chores during the day. Mother is able to sleep during the night but has primary responsibility for taking care of household chores during the day. According to father, the children are very messy and caring for the house requires a lot of effort on mother's part.

14. According to PCDA's November 2013 progress summary, parents report that Claimant has made progress during the preceding six months. He responds when called and maintains attention more frequently. Father continues to be concerned with Claimant's lack of safety awareness. Claimant's parents have requested additional services from PCDA in order to address Claimant's self-help deficits, and in particular, his problems with feeding. In addition, parents believe that if additional hours of service are authorized, PCDA will have greater success in obtaining DI able to work during parents preferred hours. Parents presented no evidence other than their own testimony in support of their contentions.

#### SERVICE AGENCY CONTENTIONS

15. Agency has agreed to fund at 12 hours per week, is the agency designated to address Claimant's self-help and behavioral deficits. Because of the problems scheduling PCDA, during the informal fair hearing, Strollo offered parents a different socialization program. Parents declined this offer because they are familiar with PCDA. In light of PCDA's November 2013 Progress Report, Strollo does not believe Claimant requires an additional two hours per week of socialization training.

## LEGAL CONCLUSIONS

### JURISDICTION AND BURDEN OF PROOF

1. The Lanterman Act governs this case. An administrative hearing to determine the rights and obligations of the parties, if any, is available under the Lanterman Act to appeal a regional center decision. (§§ 4700-4716.) Claimant requested a fair hearing to appeal the Service Agency's decision to deny two hours of additional PCDA SEDI socialization training. (Factual Findings 1 through 5.)

2. The standard of proof in this case is a preponderance of the evidence, because no applicable law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.) Because Claimant is requesting additional services, he bears the burden of proof. In seeking government benefits, the burden of proof is on the person asking for the benefits. (See, *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 (disability benefits).)

### APPLICABLE LAW

3. The Lanterman Act sets forth a regional center's obligations and responsibilities to provide services to individuals with developmental disabilities. As the California Supreme Court explained in *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388, the purpose of the Lanterman Act is twofold: "to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community" and "to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community." Under the Lanterman Act, regional centers are "charged with providing developmentally disabled persons with 'access to the facilities and services best suited to them throughout their lifetime'" and with determining "the manner in which those services are to be rendered." (Id. at p. 389,

quoting from § 4620.)

4. To comply with the Lanterman Act, a regional center must provide services and supports that “enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age.” (§ 4501.)

5. Regional centers provide “specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives.” (§ 4512, subd. (b).)

6. The determination of which services and supports the regional center shall provide is made “on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option.” (§ 4512, subd. (b).) As the California Supreme Court recognized in *Association for Retarded Citizens, supra*, 38 Cal.3d at p. 390, while a regional center has “no discretion at all in determining whether to implement” an individual program plan, it has “wide discretion in determining how to implement” an individual program plan.

7. As set forth in section 4646, subdivision (a): “It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the



further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.”

8. Section 4646, subdivision (d): “Individual program plans shall be prepared jointly by the planning team. Decisions concerning the consumer’s goals and objectives, and services and supports that will be included in the consumer’s individual program plan and purchased by the regional center or obtained by generic agencies shall be made by agreement between the regional center representative and the consumer or, where appropriate, the parents, legal guardian, conservator, or authorized representative at the program plan meeting.”

#### DISCUSSION

9. As set forth at Factual Findings 1 through 14 and Legal Conclusions 3 through 8, the IPP is central to the identification of Claimant and his family’s needs and preferences. Claimant’s IPP objectives acknowledge Claimant’s self-help and behavioral deficits. Service Agency has agreed to fund 12 hours per week of DDT from SEEK to address Claimant’s self-help and behavior deficits. Parents have elected to temporarily discontinue this service.

10. Service Agency has also agreed to fund 2 hours per week of SEDI services from PCDA to address Claimant’s socialization deficits. Parents have had difficulty utilizing this service because they have requested the service be provided at a time when PCDA’s DI staff are not available. Consequently, Claimant has been placed on a waiting list for PCDA services. Parents have asked for an additional two hours per week of PCDA services to address Claimant’s self-help deficits and in particular his feeding problems. Parents’ have failed to produce evidence that supports their belief that PDCA is the appropriate agency to provide such training. In fact, PCDA’s most recent progress report recommends two

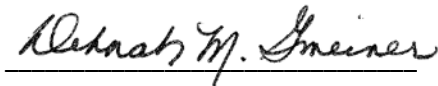
hours of service per week for the next six months with a focus on social and emotional objectives. Furthermore, parents presented no evidence that increasing the number of PCDA service hours will improve the likelihood that PCDA will be able to schedule DI staff to meet with Claimant at a time that is convenient for parents' schedule.

11. Parents are having problems utilizing the services made available to them by Service Agency. In this regard, the assistance of Claimant's service coordinator may facilitate better coordination and utilization of services for Claimant and his siblings.

## ORDER

Claimant's appeal is denied.

Dated: December 5, 2013

A handwritten signature in black ink, reading "Deborah M. Gmeiner", is written over a horizontal line.

DEBORAH M. GMEINER

Administrative Law Judge

Office of Administrative Hearings

## NOTICE

Under the Lanterman Developmental Disabilities Services Act, this is a 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.