

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

SAN ANDREAS REGIONAL CENTER,

Service Agency.

OAH No. 2013110471

DECISION

Administrative Law Judge Regina J. Brown, State of California, Office of Administrative Hearings, heard this matter in Watsonville, California, on January 31, 2014.

Claimant was represented by her father.

James F. Elliott, M.S.W., Fair Hearing Designee, represented service agency San Andreas Regional Center (SARC).

The matter was submitted for decision on January 31, 2014.

ISSUE

Whether SARC must reimburse Claimant's parents for the cost of a psychological assessment conducted before Claimant was determined eligible for regional center services?

FACTUAL FINDINGS

1. Claimant is 6 years old. Claimant lives with her mother, father, and younger brother.

2. Claimant has been diagnosed with Autism Spectrum Disorder. Claimant has a history of persistent deficits in social communication and social interaction. She attends elementary school and has an Individualized Education Plan. With the assistance of an aide, she is able to follow structured classroom activities and will sit with peers when prompted. However, without constant intervention, she has little social interest in other children and isolates herself. She does exhibit areas of academic strength, such as recognizing letters, reading, and number concepts. Regarding her daily living skills, Claimant is toilet-trained, but she will not initiate toileting independently, and has accidents. She does not wash her face, brush her teeth, or bathe independently.

3. Claimant's parents have sought intervention to address Claimant's behaviors. In January 2013, her parents sought the services of Lynn Koegel, Ph.D., CCC-SLP, with Koegel Autism Consultants. Dr. Koegel is not licensed by the State of California. Months later, Dr. Koegel conducted a comprehensive assessment and standardized tests on Claimant, conducted a parent consultation, observed video clips of Claimant, and prepared a formal assessment report. Claimant's parents paid Dr. Koegel \$2,500, for her services.

4. In March 2013, Claimant's parents applied for SARC services. On June 26, 2013, Claimant was found ineligible for regional center services because she did not meet the qualifying conditions for eligibility. Claimant's parents filed an appeal.

5. On August 12, 2013, SARC conducted an informal fair hearing meeting with Claimant's parents. During the meeting, Claimant's father stated that he had additional documentation to substantiate Claimant's eligibility for regional center services. SARC requested a copy of the documentation to review.

6. Carrie Molho, Ph.D., SARC's Autism Spectrum Disorder Clinical Coordinator, reviewed the school district's psych-educational assessment of Claimant, Claimant's 2013 IEP Addendum, and Dr. Koegel's assessment report dated August 7,

2013.<sup>1</sup> Molho also scored the Adaptive Behavior Assessment System-II Survey (ABAS II) that her parents completed. Dr. Molho found that Claimant demonstrated deficits in multiple environments and her impairments were greater than the intake team had initially determined when she was found ineligible for regional center services in June 2013. Dr. Molho recommended to the SARC eligibility team that Claimant be found eligible under Autism Spectrum Disorder. On September 5, 2013, Claimant was found eligible for regional center services, and an Individual Program Plan (IPP) was created for Claimant.

7. Claimant's parents requested that SARC reimburse the cost of Dr. Koegel's psychological assessment of Claimant. On October 17, 2013, SARC issued a Notice of Proposed Action denying the request with the stated reason: "Consumer was not a client of the regional center at the time of service and therefore did not have an Individual Program Plan."

8. On November 9, 2013, Claimant's parents appealed SARC's denial of the request for reimbursement.

9. On November 25, 2013, SARC conducted an informal fair hearing meeting regarding the decision to deny the request for reimbursement. Claimant's father contended that SARC had not performed a proper eligibility assessment according to the California Department of Developmental Services, Autism Spectrum Disorders, Best Practice Guidelines for Screening, Diagnosis and Assessment. In particular, he contended that SARC had not completed a sufficient record review and had not requested the

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<sup>1</sup> A regional center may consider evaluations or tests that have been performed by, and are available from, other sources during an eligibility assessment. (§ 4643, subd. (a).)

necessary records from the school district. He believed that if SARC had obtained this documentation, then Claimant would have been found eligible for services, and they would not have incurred the costs associated with Dr. Koegel's assessment. SARC upheld the denial of the request for reimbursement. This fair hearing followed.

10. According to Dr. Molho, SARC has licensed psychologists on staff to conduct assessments and standardized tests, and when needed, they also have two vendorized psychologists. All psychologists that perform assessments for SARC must be licensed by the State of California. Dr. Molho also confirmed that Dr. Koegel's assessment report would not have been sufficient to establish Claimant's eligibility because she did not use the ABAS II, which is what SARC requires to determine eligibility, and Dr. Koegel is not licensed by the State of California.

11. Claimant's father admitted that he did not request that SARC fund the psychological assessment conducted by Dr. Koegel.

## LEGAL CONCLUSIONS

1. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act (Lanterman Act). (Welf. & Inst. Code, § 4500, et seq.)<sup>2</sup> 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 life of the community." (§ 4501.) Regional centers are charged with the responsibility of carrying out the state's responsibilities to the developmentally disabled under the Lanterman Act. (§ 4620, subd. (a).)

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<sup>2</sup> All references are to the Welfare and Institutions Code.

2. Any person believed to have a developmental disability is eligible for initial intake and assessment services by the regional center. (§ 4642.) If an assessment is needed to determine eligibility for regional center services, it must be performed by the regional center within 120 days following initial intake. (§ 4643.) An assessment may include collection and review of available diagnostic data, necessary tests and evaluations, and summarization of developmental levels and service needs. (§ 4643.)

3. When an individual is determined eligible after intake and assessment, regional centers are directed to conduct a planning process that results in an IPP designed to promote as normal a life as possible. (§ 4646.) The IPP is developed by an interdisciplinary team and must include participation by the client and/or his or her representative. Among other things, the IPP must set forth goals and objectives for the client, contain provisions for the acquisition of services (which must be provided based upon the client's developmental needs), contain a statement of time-limited objectives for improving the client's situation, and reflect the client's particular desires and preferences. (§§ 4646, 4646.5, subds. (a)(1)

& (4), 4512, subd. (b), 4648, subd. (a)(6)(E).) Decisions concerning the consumer's goals, objectives, and services and supports that are included in the IPP and which are to be purchased by the regional center, must be agreed upon by all parties at the program planning meeting. (§ 4646, subd. (d).) California Code of Regulations, title 17, section 50612, requires that a purchase of service authorization pursuant to the IPP must be obtained from a regional center in advance of any service purchased out of regional center funds, except in emergency situations.

4. Claimant's parents request that they be reimbursed for the cost of a psychological assessment purchased prior to Claimant being found eligible for regional center services. They assert they would not have incurred the cost of the assessment if SARC had properly evaluated Claimant when they first applied. The request for

reimbursement must be denied. Under the Lanterman Act, the regional center is required to assess applicants for regional center services to determine if they are eligible. Such an assessment was provided to Claimant by SARC in June 2013, following Claimant's initial application for services. SARC determined that Claimant was not eligible for services. SARC thus complied with its obligation under the Lanterman Act.

It is undisputed that Claimant was subsequently found eligible for regional center services following SARC's review of the psychological assessment provided by her parents, and review of additional information obtained from Claimant's school and parents. However, this does not mean SARC should be held responsible for the cost of the psychological assessment. The assessment was not required under the Lanterman Act or requested by SARC. Nor is there any provision in the Lanterman Act authorizing the funding or purchase of services or supports during the intake and assessment process. In this case, it is clear that Claimant's parents unilaterally decided to obtain the assessment to bolster Claimant's application for services. SARC is not responsible for their decision.

It must also be noted that under the Lanterman Act, the services and supports to be provided to a consumer must be determined through the IPP process. Purchase or funding of a service may only occur following agreement of all parties to the IPP and issuance of a purchase of service authorization. In this case, there was no planning team, no planning team meeting, no planning team agreement for purchase of a psychological assessment, and no IPP. At the time Claimant's parents purchased the assessment, Claimant had not yet been found eligible for SARC services and, therefore, no authorization for SARC to purchase the assessment could or did exist. Under such circumstances, SARC is prohibited by law from paying for the psychological assessment. Accordingly, the request of Claimant's parents for reimbursement of the cost of the

psychological assessment obtained prior to Claimant being found eligible for regional center services must be denied.

## ORDER

The request that San Andreas Regional Center reimburse Claimant's parents for the cost of a psychological assessment conducted before Claimant was eligible for regional center services is denied.

DATED: February 14, 2014

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REGINA J. BROWN

Administrative Law Judge

Office of Administrative Hearings

## NOTICE

**This is the final administrative decision in this matter. Judicial review of this decision may be sought in a court of competent jurisdiction within ninety (90) days.**