

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

FAR NORTHERN REGIONAL CENTER,

Service Agency.

OAH No. 2014030180

DECISION

This matter was heard before Administrative Law Judge Susan H. Hollingshead, State of California, Office of Administrative Hearings (OAH), in Chico, California, on April 9, 2014.

The Service Agency, Far Northern Regional Center (FNRC), was represented by Phyllis J. Raudman, Attorney at Law.

Claimant was represented by his mother.

Alicia Cuevas, Spanish language interpreter, translated the proceedings.

Oral and documentary evidence was received. The record was closed and the matter submitted for decision on April 9, 2014.

ISSUES

Is FNRC prohibited from funding equestrian therapy services for claimant as an identified suspended service pursuant to Welfare and Institutions Code section 4648.5? If so, is claimant entitled to an exemption pursuant to section 4648.5, subdivision (c)?¹

FACTUAL FINDINGS

1. Claimant is an eleven-year-old boy who is eligible for FNRC services based on a diagnosis of cerebral palsy and an unspecified intellectual disability. He receives services and supports pursuant to the Lanterman Developmental Disabilities Services Act (Welfare and Institutions Code Section 4500 et seq.)

2. Claimant's mother began purchasing equestrian therapy services for claimant through Handi-Riders of Northern California. She believes this service is beneficial for claimant, but it is a financial hardship for her to continue funding. FNRC was requested to fund this service.

3. Regional centers are governed by the provisions of the Lanterman Act. Section 4648.5, subdivision (a), which was enacted in 2009, suspends regional centers' authority to purchase 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; and (4) nonmedical therapies, including, but not limited to, specialized recreation, art, dance, and music.

Regional centers retain authority to purchase the services enumerated in section

¹ Unless otherwise indicated all statutory references are to the California Welfare and Institutions Code.

4648.5, subdivision (a), only where a consumer falls within the exemption set forth in section 4648.5, subdivision (c), which provides:

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.

4. In response to the mandates of section 4648.5, FNRC determined that section 4648.5, subdivision (a)(4), prohibits purchase of the equestrian therapy services provided by Handi-Riders because this service constitutes "a nonmedical therapy" which is a suspended service. FNRC further determined that claimant did not qualify for an exemption permitting the purchase of this service.

5. On February 20, 2014, FNRC issued a Notice of Proposed Action (NOPA) to claimant, advising that "Your request for FNRC to fund equestrian therapy has been denied, equestrian therapy is a suspended service."

The NOPA advised claimant that the reason for this action was as follows:

Legislative changes to the Lanterman Act enacted on 7/28/2009 prohibit Far Northern Regional Center from funding equestrian therapy services, except in extraordinary

circumstances. Far Northern Regional Center has reviewed your request and determined that it does not meet the criteria for an exception.

6. Claimant filed a Fair Hearing Request, received by FNRC on February 27, 2014, appealing that decision. The requested was translated as follows:

I ask for this because Far Northern Regional Center denied to pay for therapy that [claimant] is actually receiving at Handi Riders twice per week. [Claimant] is motivated in doing this therapy, he gets more strength in the thick part of the trunk because he is really weak. I hope that they understand that it is something necessary for him, since he does not receive physical therapy and this is the only one thing that he is taking to get better.

7. Marlene McCollum is a FNRC Case Management Supervisor. She testified that equestrian services are nonmedical therapy and they were not determined to be the primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of claimant's developmental disability, cerebral palsy and intellectual disability, nor are they necessary to enable him to remain in his home.

She described the FNRC process for determining whether claimant meets exemption criteria. The agency considers the following criteria in making that determination:

Definitions (Webster's):

Extraordinary – going beyond what is usual, regular or customary

Primary – of first rank, importance or value

Critical – indispensable, vital

Ameliorate (ing)– to make better or more tolerable

Criteria for exception:

1. Is there an alternative service available to meet this consumer's needs?
2. What is the extraordinary circumstance in the consumer's life?
3. Is the service the most important service the Regional Center can offer to address the effects of the consumer's developmental disability?
 - a. What is the consumer's disability and what are the effects we are trying to make better?
 - b. Can we assert this is the most important service we can offer to make the effects of the disability more tolerable or better?
 - c. Is there any other service not subject to this exception that may provide the same benefits?
4. Is this service indispensable to any plan which seeks to make the effects of the disability more tolerable and less impactful on the consumer and his/her family?

a. To say it is critical, we need to certify that any plan without this service, will fail to improve (or make better) the effects of the consumers disability.

1. This service must be central or a linchpin to all other services the consumer receives.

5. Will the absence of this service threaten the ability of the consumer to remain I in his/her own home?

8. Ms. McCollum testified that, after considering these criteria, FNRC determined that claimant did not qualify for an exemption because Handi-Riders is not the primary or critical service for ameliorating the effects of his developmental disability, nor is it required to allow claimant to continue living in the family home. She testified that other services, including those offered in his educational program, were more critical to claimant. Ms. McCollum explained that while equestrian therapy services may provide a benefit to consumers in general, in light of the statutory changes, FNRC is prohibited from providing the service absent an exemption.

9. Claimant attends a Butte County Office of Education program at Sycamore Middle School. His Individualized Education Program (IEP) dated January 21, 2014, indicates that he qualifies for special education based on a primary disability of Orthopedic Impairment (OI), and a secondary disability of Intellectual Disability (ID). Claimant's IEP states that his related services include adaptive physical education, school-based occupational therapy (OT) and physical therapy (PT), speech and language, and assistive technology. Additional OT and PT services, and equipment needs, are provided by CCS (California Children's Services).

10. Physical Therapist Matt Schaefer M.S. PT, PCS, performed a physical therapy evaluation of claimant for the Butte County Office of Education on September 6, 2013. His

assessment report noted that claimant “presents with hypertonic muscle tone at both his upper and lower extremities” and he “has extensive strength limitations throughout his trunk and extremities. He has challenges with concentric, eccentric, and graded control. The aforementioned challenges with tone, range of motion and strength impact his ability to have sufficient muscular endurance for all gross motor skills.” Mr. Schaefer also noted in his report that claimant was using the following adaptive equipment: wheelchair, prone stander with tray and adaptive bicycle.

FNRC recently funded the purchase of the specialized tricycle (adaptive bicycle) for claimant. As part of that process, FNRC also funded a PT assessment “in order to verify that the recommended equipment will be safe for [claimant] to utilize.” Mr. Schaefer conducted the equipment assessment and, after determining that it was not medically necessary, recommended a Rifton tricycle as being most appropriate for claimant.

Mr. Schaefer recommended continued PT with a suggested IEP goal of claimant “independently advancing his wheelchair forward at least 100 feet, on a flat surface, in less than 90 seconds.”

11. In a Physical Therapy Progress Report dated January 19, 2014, Mr. Schaefer indicated the “primary focus of physical therapy thus far has been on the following:

1. Increased standing activity
2. Using mobile stander inside the classroom, accessing the classroom”

12. Claimant’s aunt testified to her observations of claimant since he began participating in Handi-Riders equestrian therapy. She opined that he has “made progress and family and friends have noticed the difference.” He speaks more and engages more socially. She suggested that equipment claimant utilizes cannot be compared with equestrian therapy. “You can’t compare equipment with nature and animals.”

13. Claimant's mother testified that claimant has received significant benefits during the approximately two months that he has received equestrian therapy at Handi-Riders. She agreed that family and friends are noticing changes. She contends that claimant is speaking more and developing hand and trunk strength. Claimant "is motivated to go, likes it, and we can see in these months he's progressing." She opined that with equestrian therapy and the other programs claimant receives, in combination, "he would be better." She also stressed that an adaptive tricycle is not like horse therapy. She questioned why FNRC could not continue equestrian therapy when she believes it is benefitting him.

Claimant's mother testified that equestrian therapy was not required to maintain claimant in the family home.

14. Claimant's physician, Chuk Ndulue M.D., provided the following letter dated April 8, 2014:

TO WHOM IT MAY CONCERN

[Claimant], DOB 2/18/2003, has been under my care and he has a severe neurological disorder along with social deprivation and isolation. He likes Horse therapy a lot and obviously benefits from it. Please allow him to participate with safeguards. Thank you.

15. There was no evidence presented that any health care provider had observed claimant while he participated at Handi-Riders. There was no evidence presented to demonstrate how claimant has benefitted from the program or whether or not this service is medically necessary.

16. Evidence did not established that the equestrian therapy services that claimant is receiving from Handi-Riders are a primary or critical means for ameliorating the

physical, cognitive, or psychosocial effects of his developmental disability. It was established that the services are not necessary to enable claimant to remain in his home.

LEGAL CONCLUSIONS

1. Section 4648.5 of the Lanterman Act provides:

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

2. *Burden of Proof.* In this matter, FNRC determined that it is prohibited from funding equestrian therapy services for claimant as it is an identified suspended service pursuant to section 4648.5. Section 4648.5 expressly prohibits regional centers from purchasing nonmedical therapies by suspending their authority to do so. FNRC determined that such services are no longer authorized and that claimant did not otherwise qualify for an individual exemption.

There was no evidence that claimant's equestrian therapy services are appropriately categorized as anything other than "nonmedical therapy" and, as such, it falls within the prohibition of section 4648.5, subdivision (a)(4).

Claimant bears the burden of establishing that he qualifies for an exemption under section 4648.5, subdivision (c).² Claimant has not met that burden. There is no evidence

² California Evidence Code section 500 states that "[e]xcept as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting."

that the loss of equestrian therapy services threatens claimant's ability to remain in his home, and that no alternative services are available to meet his needs. In addition, claimant has failed to show that equestrian therapy services are "a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of the consumer's developmental disability." Even though this service may provide benefit to the claimant, FNRC is prohibited from funding a suspended service unless claimant qualifies for an exemption pursuant to this section.

3. The above matters having been considered, claimant does not currently qualify for an exemption under section 4648.5, subdivision (c).

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ORDER

The appeal of claimant Daniel H. is denied. FNRC is not required to fund claimant's equestrian therapy services at this time.

DATED: April 21, 2014

SUSAN H. HOLLINGSHEAD

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of this decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)