

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

Claimant,

vs.

NORTH LOS ANGELES COUNTY

REGIONAL CENTER,

Service Agency.

OAH Case No. 2014071158

DECISION

This matter came on regularly for hearing before Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, on December 9, 2014, in Van Nuys, California.

Stella Dorian, Fair Hearing Representative, represented North Los Angeles County Regional Center (Regional Center or Service Agency).

Claimant's parents¹ represented Claimant.

Oral and documentary evidence was received at the hearing and the matter was submitted for decision.

¹ Names have been withheld to protect Claimant's and her family's privacy.

ISSUE

Should Regional Center fund the services provided by the College Internship Program (CIP) in Long Beach, California?

FACTUAL FINDINGS

1. Claimant is an 18-year-old Service Agency consumer with a qualifying diagnosis of autism.
2. Claimant is verbal, ambulatory and possesses average intelligence. In terms of daily living tasks, she can perform most on her own, but occasionally needs assistance. For instance she requires prompts to shower and to brush her teeth. She dresses independently, but relies on her mother for selecting the clothes to wear.
3. Claimant faces many of the challenges faced by individuals with autism in the areas of socialization, communication, and organization. She has deficits in reciprocal social interaction, makes limited eye contact, has diminished ability to carry on a conversation, and has poor personal space awareness. Claimant is not motivated to initiate social interactions. She likes to be sedentary, and is happy to be alone. In conversation, she tends to remain on a subject of interest to her, does not know how to merge into a conversation, and will blurt things out that are not appropriate in the context of the conversation. Her thought process is unorganized and she does not finish her sentences. However, she processes written information well. She needs assistance with time management and generalization. She does not initiate tasks and needs constant monitoring and redirection. She prefers a structured environment, and functions well in such environment. She needs tasks broken down into small steps in order to follow through, and needs assistance in breaking down the tasks into smaller steps.

4. a. Claimant's parents have worked to develop a support system for Claimant to be successful, or what Claimant's mother referred to as a "village," which includes Regional Center and other public and private participants. Susan Baukus (Baukus), a behavior therapist, first met Claimant when the consumer was seven years old, and provided Applied Behavior Analysis therapy funded by Service Agency. Baukus currently provides Claimant social skills supports, in which the therapist encourages interactions with peers and helps Claimant plan and execute activities.

b. Kathy Spielman (Spielman), who holds special education credentials, first met Claimant when the student was a junior at Agoura High School. Spielman subsequently continued to work with Claimant as a private tutor, helping with academic skills, helping Claimant become more organized about doing school work, and assisting her with self-advocacy. Spielman believes Claimant has the potential to complete college work, but that she requires a supportive environment to succeed.

c. Baukus and Spielman support continued fully-integrated services, or "wrap-around" supports, for Claimant to maintain and increase the gains she has made over the years, and agree that CIP is ideally suited to meet Claimant's needs.

d. Nicole E. McCarthy, L.C.S.W., Claimant's therapist with Kaiser Permanente since November 2010, has been working with Claimant on recognizing social cues and addressing other challenges associated with autism. In a letter dated January 3, 2014, she expressed her support for Claimant's participation in CIP.

5. In August 2013, Claimant attended the CIP two-week summer program. She was evaluated by CIP staff in the areas of social skills, independent living skills, self-determination/self-advocacy, and ability to apply the skills learned during the summer program, all areas in which needs were identified. CIP staff concluded that Claimant would benefit from participation in the regular CIP program.

6. Claimant attended regular classes at Agoura High School for the past four years, receiving special education services and supports. She graduated in June 2014, and her grade point average at graduation was 3.6.

7. Claimant's most recent Individual program Plan (IPP) was completed after a meeting on April 4, 2013. As pertinent to this matter, the IPP has as a desired outcome, number 5, for Claimant to attend college. Amendments on August 6, 2014, have added as outcomes Claimant's desire to obtain independent living skills, to live independently in the community, to improve social interaction, and to attend a community college.

8. Claimant and her parents have met with Service Agency staff to discuss her current and future goals and to amend the IPP in accordance with these goals. Claimant wants to attend college and live independently, with appropriate supports. Claimant and her parents expressed a preference for CIP as the program that will best meet Claimant's needs. Claimant has enrolled in Long Beach City College, and plans to start classes in the February 2015 term. CIP and Long Beach City College are both outside Service Agency's catchment area. CIP is vendored by Harbor Regional Center.

9. Service Agency has offered services within its catchment area. Tierra del Sol Foundation (Tierra) offers a program that may serve Claimant's needs for support while attending college, the Nexus Program (Nexus). Nexus provides non-academic supports for students attending college and provides assistance to transition into the work place. Supports range from helping identify classes to providing internship and other community and work integration opportunities. Nexus staff members, called "coaches," help coordinate access to schools' programs for disabled students. Nexus coaches meet with students at school to provide services, typically for a total of six hours each day. The ratio of coaches to participants is three to one. The program costs \$2,000 per month.

10. In addition to a college support program, Service Agency is willing to fund supported living services, adaptive skills training, residential placement, and health relationship classes. Service Agency has identified the PathPoint (PathPoint) Community Independent Living Program as a potential service. PathPoint owns or leases apartments in which program participants reside, typically four residents per apartment, and provides independent living skills services. Services are intended for individuals living independently for the first time, and residents are expected to transition to their own apartments. Residents must be high-functioning developmentally disabled adults. Staff does not reside in the apartments, and the staff-to-resident ratio is one-to-six. The average age for residents is mid 20s. The cost for providing independent living services to one consumer is approximately \$1,000 per month.

11. Claimant's preferred program, CIP, is an integrated, structured residential program that provides services and supports to young adults, typically 18 to 26 years of age, with diagnoses on the autism spectrum or with other learning differences who are enrolled in or plan to attend college. Students are individually assessed and receive social skills, adaptive skills, independent living skills, and self-advocacy skills training, academic support, and other services in accordance with assessed needs. Classes are provided that address challenges unique to individuals with autism, such as those that address executive functioning, sensory integration and theory of mind issues. Participants also have the opportunity to participate in individual therapy. Emphasis is placed on wellness, which encourages individuals to become physically active and to learn about proper nutrition. CIP provides career preparation services, which include volunteering opportunities, internships, jobs, and support for participation in these endeavors.

12. CIP offers two separate programs, both of which Claimant wishes to join, the SLS program described in factual finding number 11 and the Community Integration

program. In the Community Integration program, participants build on acquired skills in community settings and activities, which include vocational and career opportunities. The goal of both programs is for individuals to achieve and maintain independent lives. Students' needs and progress are regularly assessed to determine the specific level of services and supports required. Students reside in apartments close to school, with common areas for group instruction and activities. The SLS program costs \$4,600 per month and the Community Integration program costs \$110 per day, five days per week.

13. Claimant enrolled in the CIP programs in October 2014 and is doing well. CIP Director of Admissions Margaret Sanderson (Sanderson) noted that Claimant met the rigorous admission criteria, and is making progress in a supportive environment surrounded by her peers. A planning document dated October 28, 2014, contains academic, independent living skills, career, socialization, and wellness goals. For instance, Claimant is participating in academic skills classes in preparation for attending college. She has opened a bank account and is receiving money management instruction. She lives with a roommate and is learning to manage her apartment. She is participating in group sessions designed to increase socialization with peers. Her father has noticed that Claimant is more independent, that she is becoming more interested in actively planning her activities, and that she has improved her organizational skills.

14. CIP Director of Admissions Sanderson testified without contradiction that of the 21 current participants in CIP, 11 receive funding from various regional centers, including two Service Agency consumers.

15. Claimant's parents testified that they have reviewed the options provided by Service Agency, but found them less able to meet Claimant's needs than CIP. In their view, the programs offered by Service Agency lack the structure and comprehensiveness that Claimant needs to succeed. CIP is more like the "wrap-around" successful services they have procured for Claimant through her graduation from high school. In CIP,

Claimant is with her peers and in an environment that focuses on the specific needs of those in the autism spectrum.

16. In order to decide on the best mix of colleges and supports, Claimant's parents hired educational consultant Laura Leavitt (Leavitt) to assist them. Leavitt visited several local college campuses, including Los Angeles Valley College, Mission College, Pierce College, and Moorpark College, and concluded that Claimant would benefit from an inclusive residential opportunity and recommended CIP. In her view, Claimant is bright but does not have the executive functioning skills for social skills without services and supports.

17. On June 24, 2014, Service Agency notified Claimant and her family that it was denying their request to fund CIP because it was not the most cost-effective service to meet her needs. Service Agency noted that there were cheaper alternatives in its catchment area. Moreover, Service Agency noted that CIP had a single program for all participants and that Claimant's program would have to be specifically tailored to her specific, assessed, needs. The letter was followed by a Notice of Proposed Action dated July 1, 2014, stating the following reason for the denial: "Comparable and more cost effective option is available." (Exh. 1, at p. 14.) On July 16, 2014, Claimant filed a Fair Hearing Request, seeking funding for the CIP program.

LEGAL CONCLUSIONS

1. In enacting the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code² section 4500 et seq., the Legislature accepted its responsibility to provide for the needs of developmentally disabled individuals and recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (§ 4501.)

² All further references are to the Welfare and Institutions Code.

2. The Lanterman Act gives regional centers, such as Service Agency, a critical role in the coordination and delivery of services and supports for persons with disabilities. (§ 4620 et seq.) Thus, regional centers are responsible for developing and implementing IPPs, for taking into account consumer needs and preferences, and for ensuring service cost-effectiveness. (§§ 4646, 4646.5, 4647, and 4648.)

3. Section 4512, subdivision (b), defines the services and supports that may be funded, and sets forth the process through which they are identified, namely, the IPP process, a collaborative process involving consumers and service agency representatives. The statute defines services and supports for persons with developmental disabilities as “[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. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be 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 plan participants, the effectiveness of each option in meeting the goals in the individual program plan, and the cost-effectiveness of each option. . . .” (*Id.*) Services and supports can include training, education, community integration services, community support, daily living skills training, social skills training, and supported living arrangements. (*Id.*)

4. In this case, the evidence establishes that Claimant needs services and supports in order to attend college, including education supports, community integration services, community support, daily living skills training, social skills training,

and supported living arrangements. The evidence presented at the hearing also establishes that CIP can meet these needs in an effective manner. Its integrated model is very similar to the manner in which services and supports have been delivered to Claimant in the past. In fact, the services offered by CIP have already provided benefits to Claimant. There are other aspects of the CIP program that will enhance its effectiveness for Claimant. She needs the structure that the program provides. She will benefit from specific instruction designed for those on the autism spectrum, such as focus on executive function and theory of mind, and she will be participating in programs with peers in an environment designed to improve social interaction.

CIP is the strong preference of Claimant, her family, and those familiar with her challenges and successes. Nexus and PathPoint contain many of the same components as CIP, albeit without the same level of depth or structure, and without the 24/7 integration. However, the programs suggested by Service Agency do not operate in Long Beach and are therefore not real alternatives for Claimant, who will be attending school at Long Beach City College. While the CIP program is not inexpensive, it is the only one that will provide services in the college Claimant will be attending and its benefits are many. The program is, therefore, cost-effective.

Service Agency argues that CIP is not appropriate because it offers a single program to all participants and services must be provided to meet assessed needs. As noted above, CIP meets Claimant's needs as established at the hearing. Moreover, despite focusing on specific classes and program components aimed at areas of specific concern to individuals in the autism spectrum, CIP engages in ongoing assessment of individual students in order to fine-tune individual schedules and programs.

In the existing circumstances, CIP is a cost-effective service and support to meet Claimant's needs and help her achieve and maintain an independent, productive, and normal life. In addition, it is a program vendored by another regional center, and other regional center and Service Agency consumers participate in it.

5. One of statutes relied upon by Service Agency to deny funding is section 4648, subdivision (a)(6)(D), which provides: "The cost of providing services or supports of comparable quality by different providers, if available, shall be reviewed, and the least costly available provider of comparable service, including the cost of transportation, who is able to accomplish all or part of the consumer's individual program plan, consistent with the particular needs of the consumer and family as identified in the individual program plan, shall be selected. In determining the least costly provider, the availability of federal financial participation shall be considered. The consumer shall not be required to use the least costly provider if it will result in the consumer moving from an existing provider of services or supports to more restrictive or less integrated services or supports." However, as set forth in factual finding numbers 8 through 16 and legal conclusion number 4, no service comparable to that offered by CIP is available. Therefore, section 4648, subdivision (a)(6)(D), cannot be used to deny funding to CIP.

6. Accordingly, Service Agency shall fund the SLS and Community Integration services provided by CIP, by reason of factual finding numbers 1 through 17 and legal conclusion numbers 1 through 5.

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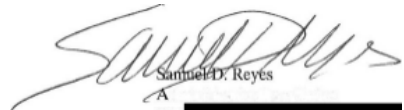
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ORDER

Claimant's appeal is granted, and Service Agency shall fund the SLS and Community Integration services provided by College Internship Program (CIP), Long Beach.

Dated: 12/09/14


_____/s/_____
A [REDACTED]

Samuel D. Reyes

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter and both parties are bound by this Decision. Either party may appeal this Decision to a court of competent jurisdiction within 90 days.