

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

and

INLAND REGIONAL CENTER,

Service Agency.

Case No. 2014071229

DECISION

Administrative Law Judge Abraham M. Levy, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on September 10, 2014.

Stephanie Zermeño, Consumer Services Representative, represented Inland Regional Center.

Claimant's mother represented claimant.

The matter was submitted on September 10, 2014.

ISSUES

Should the Inland Regional Center be required to fund an equestrian therapy program for claimant?

FACTUAL FINDINGS

JURISDICTION AND BACKGROUND

1. Claimant is an eleven year old girl who receives services from the Inland Regional Center (IRC). Claimant qualifies for services from IRC on the basis of mild mental retardation.

2. According to claimant's most recent Individual Program Plan (IPP) dated December 10, 2013, claimant lives at home with her mother, father, and her five siblings. She attends elementary school and is in a special day class. She receives adapted physical education and speech therapy. IRC funds 30 hours preferred provider respite and 12 hours of behavior modification with Counseling Solutions for Children and Families. Claimant requires behavior modification therapy because of aggressive behaviors. She hits other children; she has caused major property damage more than once within the past year; and she has emotional outbursts where she screams, yells, and hits about five times a week. During major emotional outbursts, she hits children.

3. Claimant is requesting that IRC fund equestrian therapy. IRC denied this request in a Notice of Proposed Action dated July 17, 2014. IRC denied the request for several reasons: equestrian therapy will not alleviate claimant's mild retardation; equestrian therapy is not medically necessary or recommended; and no scientific research substantiates equestrian therapy as a proven treatment modality for mental retardation. Claimant disagreed with IRC's decision and, on July 24, 2014, requested a fair hearing to contest IRC's decision.

CLAIMANT'S EVIDENCE

4. Claimant goes horseback riding at Riverside Therapeutic Horseback Riding where she is part of a special needs group called EquiFriends. EquiFriends, according to a program pamphlet, provides recreational and therapeutic horsemanship to children and adults with a broad spectrum of disabilities. The program is designed to build muscle tone; body core strength; emotional fortitude; and a sense of independence, confidence and achievement. EquiFriends is not vendorized with IRC.

5. Claimant's mother is requesting equestrian therapy because she hopes this therapy will alleviate claimant's problem aggressive behaviors, which she described as traumatizing. Claimant has benefited from this activity, and this activity has made a

difference in her life according to her mother. Pictures of claimant riding horses show claimant happy and enjoying herself. Claimant also has obtained a sense of accomplishment and confidence. According to her IPP, claimant achieved 3rd and 5th place in a horseback riding show. However, claimant's mother did not provide testimony to show that equestrian therapy has helped to reduce claimant's problem behaviors.

IRC'S EVIDENCE

6. Annette Richardson is an Occupational Therapist at IRC. She received her B.A. degree in Occupational Therapy from Loma Linda University. At IRC, Ms. Richardson assesses children for occupational therapy to provide the best services to meet their needs.

Ms. Richardson did not disagree with claimant's mother that equine therapy is beneficial to claimant. It improves her balance and strength and improves her ability to follow instructions. But other physical activities, such as swimming and sports can achieve the same results, Ms. Richardson commented. Ms. Richardson opined that equestrian therapy is not a recognized occupational therapy treatment modality. She based her opinion on numerous peer reviewed studies.

7. Felipe Garcia is a Behavior Specialist at IRC. Mr. Garcia has an M.A. in rehabilitation counseling and is a certified rehabilitation counselor. At IRC, he is responsible for reviewing cases involving consumers in need of behavioral services.

Mr. Garcia is familiar with behavior modification services and techniques and Applied Behavior Analysis based interventions. These interventions identify antecedents to behaviors and the consequences of those behaviors and articulate goals to help decrease their frequency.

Mr. Garcia noted that, even with equine therapy, claimant's problem behaviors have not decreased from the baseline frequency for tantrums and aggression of 1 to 2 times per week. In his opinion, claimant's problem behaviors have not decreased

because the behavioral intervention therapies have not been implemented consistently by claimant's parents. Mr. Garcia referenced a progress report from Counseling Solutions for Children & Families dated July 21, 2014, prepared by Vilay Meksavank, M.S. and Prisca Gloor Maung, Ph.D. In their report Dr. Maung and Ms. Meksavank noted that claimant's parents have not implemented techniques that have been recommended to improve claimant's problem behaviors.

Mr. Garcia opined that the current behavioral interventions, if applied consistently by claimant's parents, should decrease claimant's problem behaviors.

THE PARTIES' ARGUMENTS

8. IRC argued that that equestrian therapy is not a proven therapy that will alleviate claimant's problem behaviors and that equestrian therapy is a social recreation service that IRC cannot approve.

Claimant disagreed with IRC's position and insisted that equestrian therapy will alleviate claimant's problem behaviors.

LEGAL CONCLUSIONS

THE BURDEN AND STANDARD OF PROOF

1. Each party asserting a claim or defense has the burden of proof for establishing the facts essential to that specific claim or defense. (Evid. Code, §§ 110, 500.) In this case, claimant bears the burden to demonstrate that she is entitled to receive equestrian therapy.

2. The standard by which each party must prove those matters is the "preponderance of the evidence" standard. (Evid. Code, § 115.)

3. A preponderance of the evidence means that the evidence on one side outweighs or is more than the evidence on the other side, not necessarily in number of

witnesses or quantity, but in its persuasive effect on those to whom it is addressed.
(*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

THE LANTERMAN ACT

4. "Services and supports" are defined in Welfare and Institutions Code section 4512, subdivision (b):

"Services and supports for persons with developmental Disabilities" means 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, and 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 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. . . .

5. In order to be authorized, a service or support must be included in the consumer's individual program plan (IPP.) (Welf. & Inst. Code, § 4512, subd. (b).)

6. Section 4646.4, subdivision (a) (4), requires that the Regional Center take into consideration: "[T]he family's responsibility for providing similar services and supports for a minor child without disabilities . . ." when developing, reviewing or modifying the IPP.

7. Welfare and Institutions Code section 4648 provides in pertinent part:

(1) It is the intent of the Legislature that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and in exercising personal choices. The regional center shall secure services and supports that meet the needs of the consumer, as determined in the consumer's individual program plan....

[¶] . . . [¶]

(3) A regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer from any individual or agency which the regional center and consumer or, where appropriate, his or her parents ... determines will best accomplish all or any part of that consumer's program plan.

[¶] . . . [¶]

(16) Notwithstanding any other provision of law or regulation to the contrary, effective July 1, 2009, regional centers shall not purchase experimental treatments, therapeutic services, or devices that have not been clinically determined or scientifically proven to be effective or safe or for which risks and complications are unknown. Experimental treatments or therapeutic services include experimental medical or nutritional therapy when the use of the product for that purpose is not a general physician practice. . . .

8. Welfare and Institutions Code section 4648.5 provides in pertinent part:

(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:

[¶] . . . [¶]

(2) Social recreation activities, except for those activities vendored as community-based day programs.

[¶] . . . [¶]

(4) Nonmedical therapies, including, but not limited to, specialized recreation, art, dance, and music.

[¶] . . . [¶]

(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.

EVALUATION

Claimant presented no evidence that the equestrian therapy she has identified is effective as a service and support for her developmental disability.

The evidence also established that the equestrian program that claimant asks IRC to fund is a social recreational activity that is the kind of activity any parent would be

expected to provide for any child. Claimant did not demonstrate that extraordinary circumstances exist to authorize this service pursuant to Welfare and Institutions Code section 4648.5, subdivision (c).

The regional center is therefore not required to fund the cost of claimant's equestrian therapy program.

ORDER

Claimant's appeal is denied.

DATED: September 22, 2014.

_____/s/____

ABRAHAM M. LEVY

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 the decision.