

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of :

CLAIMANT,

vs.

EASTERN LOS ANGELES REGIONAL

CENTER,

Service Agency.

OAH No. 2014100051

DECISION

This matter came on regularly for hearing before Matthew Goldsby, Administrative Law Judge, on November 12, 2014, at the Eastern Los Angeles Regional Center in Alhambra, California.

Veronica Valenzuela, Fair Hearing Representative, appeared and represented the Eastern Los Angeles Regional Center (the Service Agency).

Claimant's mother¹ (the Representative) appeared and represented Claimant. Claimant was also present.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision at the conclusion of the hearing.

¹ Claimant and his family are not identified by name in order to protect their privacy.

STATEMENT OF ISSUES

The issue in this matter is whether the Service Agency should be required to fund Claimant to attend 125 hours per month in a day program at Community Integration Project (CIP).

EVIDENCE CONSIDERED

1. Service Agency's Exhibits 1 through 14
2. Claimant's Exhibits A and B
3. Testimony of Representative, the claimant's mother
4. Testimony of Claimant
5. Testimony of Laura Cambonchi, Consumer Services Coordinator

FACTUAL FINDINGS

1. Claimant is a Service Agency consumer based on a diagnosis of Mild Mental Retardation with a co-morbid diagnosis of Expressive Language Disorder. Claimant is an adult and lives with his parents in Whittier, California. (Exhibit 5.)

2. The Service Agency most recently met with Claimant and his family on August 13, 2014, to discuss Claimant's individual program plan. The participants agreed that Claimant should continue to participate in a program that is appropriate for his needs. A desired outcome will maximize Claimant's independent skills to the best of his ability. (Exhibit 3).

3. Since 2010, the Service Agency has funded Claimant's participation in a day program at Whittier Area Parents' Association for the Developmentally Handicapped (WAPADH). Claimant attends Monday through Friday, six hours per day. Funding includes transportation to and from the vendor. (Exhibit 3).

4. The Service Agency also funds 24 hours per month of participation at CIP to increase Claimant's safety awareness skills, to improve his ability to respect people's

boundaries, and to explore various community resources available in his community. (Exhibit 6).

5. CIP is designed to assist regional center consumers to access all community-based resources, activities and programs that are generically available to anyone living in the community. The program is not designed to serve as a day program. The organization offers temporary service in the range of 5 to 10 hours per week for approximately six months. The rates for service at CIP are approximately \$33 per hour, substantially more than the group rates charged by WAPADH. (Exhibit 9; testimony of Cambonchi).

6. On August 29, 2014, Claimant returned home from the WAPADH day program with an injury to his lip. He complained to his mother that he was hit. Claimant was unable to express in any greater detail about the incident. His mother inquired with staff at the day program, but no one claimed to know what happened. The mother took photographs of Claimant which show a small abrasion to the corner of his mouth. Claimant went to a dentist later in the day after the incident, but there is no evidence that any medical care was given in relation to the injury. (Testimony of Representative; Exhibit A).

7. During another episode at the WAPADH day program, a fellow student became aggressive with Claimant. The student tried to strip Claimant of his clothing. Previously, Claimant was the victim of physical abuse at his high school. Police were summoned, but could not continue the investigation because the perpetrator was another student with special needs. (Testimony of Representative; Exhibit B).

8. The WAPADH day program has a student-teacher ratio of three-to-one. The program has had changes in staffing. Claimant often comes home upset. Claimant is no longer comfortable in the WAPADH day program, but he enjoys the activities at CIP. He knows the staff at CIP and the staff knows him. (Testimony of Representative).

9. Claimant's mother requested day program funding at CIP. Claimant's mother desires a student-teacher ratio of one-to-one because she believes that a three-to-one ratio is too challenging for a teacher to control aggressive behavior. Claimant's mother is concerned that any change in Claimant's daily routine will be disruptive to Claimant's well-being. Claimant's mother is informed and believes that other children attend CIP six hours per day, five days per week. She requested funding for Claimant to attend CIP for 125 hours per month. (Testimony of Representative and Cambonchi).

10. The Service Agency is willing to increase hours for participation at CIP on a temporary basis with a view to transitioning Claimant to another service more appropriate for his daily needs. However, the Service Agency has determined that CIP is not an appropriate day program for Claimant's needs because the program design for CIP does not include day program activities. The Service Agency has recommended other day program vendors, including one-on-one programming through personal assistance services. The family has not investigated the recommended programs. (Exhibit 1; testimony of Cambonchi).

LEGAL CONCLUSIONS

1. The Service Agency should not be required to fund Claimant to attend 125 hours of day program activities at CIP. (Factual Findings 1-10; Legal Conclusions 2-8.)

2. The Frank D. Lanterman Developmental Disabilities Act (Lanterman Act) sets forth a regional center's obligations and responsibilities to provide services to individuals with developmental disabilities. (Welf. & Inst. Code, § 4500 et seq.) 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." (Welf. & Inst. Code, § 4501.)

3. 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." (Welf. & Inst. Code, § 4512, subd. (b).) However, regional centers have wide discretion in determining how to implement an individual program plan. (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 390.)

4. 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. (Welf. & Inst. Code, § 4646, subd. (a).)

5. Individual program plans shall be prepared jointly by the planning team. Decisions concerning the consumer's goals, objectives, and services and supports that will be included in the consumer's individual program plan and purchased by the regional center or obtained from 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. (Welf. & Inst. Code, § 4646, subd. (d).)

6. The party seeking government benefits or services bears the burden of proof. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156.) The standard of proof in this case is the preponderance of the evidence because no law or statute, including the Lanterman Act, requires otherwise. (Evid. Code, § 115.)

7. In this case, there is no dispute that claimant should attend a day program. However, the family desires funding for day program attendance at CIP. The Service Agency does not join in the family's choice of a day program because CIP is not designed as a day program. The range of service options proposed by the individual plan participants includes more appropriate resources to meet the needs and preferences of Claimant. CIP is not the most effective program in meeting the goals stated in the individual program plan. At \$33 per hour, CIP is not the most cost-efficient option available to the claimant.

8. The preponderance of the evidence does not prove an entitlement to the requested benefits or show an abuse of the Service Agency's wide discretion in determining how to implement Claimant's individual program plan. Claimant and his family have not yet investigated all recommended services that will more appropriately rectify their dissatisfaction with the day program at WAPADH. Accordingly, the denial of additional hours of participation at CIP was fair and reasonable.

ORDER

Claimant's appeal is denied. The Service Agency is not required to fund Claimant to attend 125 hours per month of day program activities at CIP.

DATED: November 18, 2014

_____/s/____

MATTHEW GOLDSBY

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision. This decision binds both parties. Either party may appeal this decision to a court of competent jurisdiction within 90 days.